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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIRST INSTALMENT OF "F3" CLAIMS

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CONTENTS

	Paragraphs	Page
Introduction	1-2	9
I. OVERVIEW OF THE FIRST INSTALMENT CLAIMS	3-5	9
II. PROCEDURAL HISTORY	6-15	11
A. The nature and purpose of the proceedings	6-7	11
B. The procedural history of the claims	8-15	11
III. THE LEGAL FRAMEWORK	16-24	13
A. Applicable law	16-18	13
B. The directness requirement	19-23	13
C. Mitigation	24	14
IV. CONSIDERATION OF COMMON LEGAL ISSUES	25-102	15
A. Approach	25	15
B. Property losses	26-30	15
C. Relief paid to employees	31-48	16
D. Loss of revenue	49-58	19
E. Contract interruption losses	59-64	21
F. Buildings not intended to be rebuilt	65-66	22
G. Damage to leased premises	67-69	23
H. Contractual provisions allowing penalties for late completion or other breaches of contract	70-71	23
I. Temporary repairs followed by more permanent repairs	72-73	24
J. Temporary premises	74-77	24
K. Temporary headquarters outside Kuwait	78-79	25
L. Cost of returning employees to Kuwait	80-82	25
M. Pre-paid rent	83-85	26
N. Avoiding over-compensation	86-91	26
O. Claims preparation and claims processing costs	92-94	28
P. Exchange rate	95-97	29
Q. Interest	98-102	29
V. VERIFICATION AND VALUATION	103-125	30
A. The importance of evidence	103-108	30
B. The procedures adopted by the Panel to verify and value the first instalment claims	109-115	31
C. Evidential status of the reports of the claimants' accountants and engineers	116-119	32
D. Materiality	120-123	33
E. Reporting on the verification and valuation of the first instalment claims	124-125	34

VI.	THE FIRST INSTALMENT CLAIMS	126-500	35
	A. Introduction	126-127	35
	B. Public Authority for Youth and Sports	128-130	36
	1. Property losses	128-130	36
	C. Ministry of Finance - Kuwait Emergency Reconstruction Office	131-173	37
	1. Real property	131-169	37
	2. Other tangible property	170-173	44
	D. Amiri Diwan	174-187	45
	1. Other tangible property	174-187	45
	E. Ministry of Finance	188-211	48
	1. Introduction	188-192	48
	2. Payment or relief to others	193-202	49
	3. Public service expenditures	203-211	51
	F. Ministry of Interior	212-219	53
	1. Other tangible property	212-214	53
	2. Payment or relief to others	215-219	53
	G. Kuwait Fund for Arab Economic Development	220-247	55
	1. Business transaction or course of dealing	220-231	55
	2. Property losses	232-233	57
	3. Payment or relief to others	234-244	58
	4. Other losses	245-247	59
	H. State Audit Bureau	248-265	60
	1. Other tangible property	248-250	60
	2. Payment or relief to others	251-255	61
	3. Other losses	256-265	61
	I. Council of Ministers	266-278	64
	1. Property losses	266-271	64
	2. Business transaction or course of dealing	272-274	65
	3. Payment or relief to others	275-278	66
	J. Department of Legal Advice and Legislation	279-288	67
	1. Other tangible property	279-281	67
	2. Payment or relief to others	282-285	67
	3. Other losses	286-288	68
	K. Civil Service Commission	289-299	69
	1. Payment or relief to others	289-295	69
	2. Other tangible property	296-299	70
	L. Ministry of Higher Education	300-312	71
	1. Property losses	300-305	71
	2. Payment or relief to others	306-309	72
	3. Other losses	310-312	72
	M. Ministry of Commerce and Industry	313-325	73
	1. Property losses	313-318	73
	2. Payment or relief to others	319-322	74
	3. Business transaction or course of dealing	323-325	75

N.	National Committee for Missing and Prisoner of War's Affairs	326-344	76
	1. Payment or relief to others	326-340	76
	2. Public service expenditures	341-343	79
	3. Interest	344	80
O.	Kuwait News Agency	345-395	81
	1. Business transaction or course of dealing	345-367	81
	2. Other tangible property	368-378	85
	3. Payment or relief to others	379-382	87
	4. Public service expenditures	383-389	87
	5. Other losses	390-395	88
P.	Ministry of Justice	396-415	90
	1. Property losses	396-399	90
	2. Business transaction or course of dealing	400-405	91
	3. Bank accounts and securities	406-407	92
	4. Public service expenditures	408-411	92
	5. Payment or relief to others	412-415	93
Q.	Ministry of Awqaf and Islamic Affairs	416-438	94
	1. Property losses	416-428	94
	2. Payment or relief to others	429-432	96
	3. Income producing property	433-435	97
	4. Contract	436-438	97
R.	Public Authority for Civil Information	439-462	99
	1. Property losses	439-445	99
	2. Public service expenditures	446-449	100
	3. Payment or relief to others	450-454	101
	4. Business transaction or course of dealing	455-459	101
	5. Other losses	460-462	102
S.	Ministry of Education	463-479	103
	1. Real property	463-467	103
	2. Public service expenditures	468-471	104
	3. Contract	472-473	104
	4. Other losses	474-479	105
T.	Ministry of Social Affairs and Labour	480-496	107
	1. Contract	480-484	107
	2. Other tangible property	485-488	108
	3. Bank accounts and securities	489-491	109
	4. Payment or relief to others	492-496	109
U.	Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression	497-500	110
	1. Claim preparation costs	497-500	110
VII. SUMMARY OF RECOMMENDATIONS		501	112
Notes			114

List of tables

Page

1. Summary of the first instalment claims 10
2. Summary Table for Public Authority for Youth and Sports 36
3. Summary Table for Ministry of Finance - Kuwait Emergency Reconstruction Office 37
4. Summary Table for Amiri Diwan 45
5. Summary Table for Ministry of Finance 48
6. Summary Table for Ministry of Interior 53
7. Summary Table for Kuwait Fund for Arab Economic Development 55
8. Summary Table for State Audit Bureau 60
9. Summary Table for Council of Ministers 64
10. Summary Table for Department of Legal Advice and Legislation 67
11. Summary Table for Civil Service Commission 69
12. Summary Table for Ministry of Higher Education 71
13. Summary Table for Ministry of Commerce and Industry 73
14. Summary Table for National Committee for Missing and Prisoner of War's Affairs 76
15. Summary Table for Kuwait News Agency 81
16. Summary Table for Ministry of Justice 90
17. Summary Table for Ministry of Awqaf and Islamic Affairs 94
18. Summary Table for Public Authority for Civil Information 99
19. Summary Table for Ministry of Education 103
20. Summary Table for Ministry of Social Affairs and Labour 107
21. Summary Table for Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression 110
22. Summary of the principal claim amount and the Panel's recommendation for each first instalment claim 112

GLOSSARY

"claimant"	Any Ministry or other entity of the Government of Kuwait on whose behalf the Government of Kuwait has filed an "F3" claim
"Commission" or "UNCC"	United Nations Compensation Commission
"Corps"	The U.S. Army Corps of Engineers (see paragraph 131)
"decision"	A decision of the Governing Council of the Commission
"emergency period"	The period from 27 February 1991 until 31 May 1991, as used by the Government of Kuwait to denote the period during which reconstruction and repair work commenced (see paragraph 190)
"expert consultants"	The expert accounting and loss adjusting consultants to the Panel (see paragraph 8)
"F3" claims	The claims filed with the Commission under the Commission's claim form entitled "Claim Form for Governments and International Organizations" by the Government of the State of Kuwait, except those that have already been reviewed by the Commission and those which the Commission has identified as environmental claims (see paragraph 1)
"Farah report"	"Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535)
"first instalment claims"	See paragraph 2

"Form F"	The Commission's claim form entitled "Claim Form for Governments and International Organizations"
"GCC" or "Gulf Cooperation Council"	Cooperation Council for the Arab States of the Gulf, comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates
"Government of Kuwait" or "Government"	The Government of the State of Kuwait
"Iraq"	The Government of the Republic of Iraq
"KERO"	Kuwait Emergency Reconstruction Office
"level of materiality"	See paragraphs 120 to 123
"liberation"	The liberation of the State of Kuwait from Iraq's invasion and occupation on 26 February 1991
"occupation period"	The period from 2 August 1990 until 26 February 1991
"PAAC"	Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression
"pre-paid rent"	See paragraph 83
"principal claim amount"	See paragraph 4
"relief paid to employees"	See paragraph 32
"Rules"	The Commission's Provisional Rules for Claims Procedure, a text of which is annexed to Governing Council decision 10 (S/AC.26/1992/10)

"secretariat"	The secretariat of the Commission
"Social Security Fund"	See paragraph 41
"US$"	United States dollars

Introduction

1. At its twenty-eighth session, held from 29 June to 1 July 1998, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed a Panel of Commissioners comprising Sir Elihu Lauterpacht (Chairman) and Messrs Andrew Jacovides and Reiner Soll (the "Panel") to review those claims filed by the Government of the State of Kuwait (the "Government of Kuwait"), known as the "F3" claims. These claims comprise all of the Government of Kuwait's claims, other than those already reviewed by the Commission and those which it has classified as environmental claims. The "F3" claims have been presented by the Government of Kuwait on behalf of its various Ministries and other entities. There are 62 such claims. Each claim is made for compensation for direct loss, damage or injury alleged to be a result of Iraq's invasion and occupation of Kuwait.

2. The first instalment of these claims, comprising 20 claims (the "first instalment claims"), was submitted to the Panel on 14 September 1998, in accordance with article 32 of the Provisional Rules for Claims Procedure (the "Rules"). 1/ This report contains the Panel's recommendations to the Governing Council on these claims, and is issued under article 38(e) of the Rules. The Panel intends to review the remaining "F3" claims in two further instalments.

I. OVERVIEW OF THE FIRST INSTALMENT CLAIMS

3. The first instalment claims were selected from among the "F3" claims on the basis of the types of losses each claim presented in order to enable the Panel, first, to consider so far as possible claims with similar loss types together and, second, to examine the main legal and valuation issues in the "F3" claims at the beginning of the Panel's work.

4. The first instalment claims seek compensation for losses totalling US$2,392,128,679 plus interest of US$455,720,297. The amount claimed, per claim, excluding interest (the "principal claim amount") is set out in the table below. The Panel's findings in respect of the first instalment claims (in section VI below) include a tabular breakdown of each first instalment claim that sets out the amounts claimed, the interest claimed, and the amounts awarded.

Table 1. Summary of the first instalment claims

Claimant	UNCC Claim Number	Government Claim Number	Principal claim amount (US$)
Public Authority for Youth and Sports	5000022	18	8,073,928
Ministry of Finance - Kuwait Emergency Reconstruction Office	5000038	2	389,188,073
Amiri Diwan	5000043	7	7,391,290
Ministry of Finance	5000112	14	936,570,995
Ministry of Interior	5000137	20	292,631,800
Kuwait Fund for Arab Economic Development	5000138	21	9,263,851
State Audit Bureau	5000143	26	4,529,148
Council of Ministers	5000145	28	26,690,866
Department of Legal Advice and Legislation	5000146	29	2,413,083
Civil Service Commission	5000161	33	4,284,506
Ministry of Higher Education	5000167	39	2,515,858
Ministry of Commerce and Industry	5000168	40	20,937,074
National Committee for Missing and Prisoners of War's Affairs 2/	5000169	41	111,483,429
Kuwait News Agency	5000172	44	24,541,693
Ministry of Justice	5000177	48	81,311,962
Ministry of Awqaf and Islamic Affairs	5000178	49	68,075,121
Public Authority for Civil Information	5000179	50	32,437,230
Ministry of Education	5000180	51	93,808,789
Ministry of Social Affairs and Labour	5000188	56	58,872,844
Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression	5000193	61	217,107,139
Total			2,392,128,679

5. Having regard to the complexity of the issues raised, the volume of documentation, and the amount of compensation sought, the Panel has classified all the first instalment claims as "unusually large or complex" within the meaning of article 38(d) of the Rules, thereby requiring the Panel to complete its review of these claims within a period of 12 months.

II. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

6. In undertaking its review of the first instalment claims, the Panel has borne in mind:

(a) the status and functions of the Commission;

(b) its claims review processes, which are documentary rather than oral, and inquisitorial rather than adversarial; and

(c) the Panel's function to provide an element of due process in the review of claims filed with the Commission.

7. The Panel has, like other panels, carried out a thorough and detailed factual and legal review of these claims, performing the investigative role incumbent on the panels in the claims review process.

B. The procedural history of the claims

8. Prior to the formal submission of the first instalment claims to the Panel, the secretariat of the Commission (the "secretariat") performed a detailed review of these claims and determined, in accordance with articles 14 and 15 of the Rules, that each of the claims complied with the formal and procedural requirements of the Commission. The review also demonstrated that the complex and technical nature of a number of the elements in the claims would require the Panel to make use of independent loss adjusters and accountants as expert consultants ("expert consultants"). These were selected in August 1998. The expert consultants have worked closely with the Panel, preparing for the Panel's consideration reports covering the verification and valuation issues raised by the claims.

9. Pursuant to article 32 of the Rules, the Panel was provided with claim summaries recording the significant legal and factual issues identified in the claims as well as other information, such as legal briefing notes and reports produced by observers shortly after the liberation of Kuwait, to assist the Panel in its review of the claims.

10. The review of each claim by the Panel identified in many cases a need for further information and evidence. Each of the claimants was given the opportunity to provide the Panel with such further information and evidence.

11. The Executive Secretary of the Commission submitted a report 3/ dated 8 July 1998 to the Governing Council in accordance with article 16 of the

Rules, which set out the first instalment claims and discussed the main factual and legal issues relating to them. A number of governments, including the Government of Kuwait and the Government of the Republic of Iraq, submitted additional information and views on the issues raised in response to that report.

12. Given the nature of the claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1998.

13. Iraq submitted a response to each of the first instalment claims. Each response included a statement of its position regarding the Commission's procedures and operation and raised specific issues of law, verification, valuation or fact. The Panel has duly considered these responses and has investigated those issues of fact accompanied by sufficient information to make investigation possible. Details of the responses so investigated, and the Panel's findings in respect of them, are set out in the consideration of each of the claims below.

14. In its responses to the claims, Iraq also requested the Panel to hold oral hearings into each claim at which Iraq would be permitted to attend and make submissions. Iraq has made similar requests in relation to the Commission's review of other claims. The Panel has considered carefully whether such hearings are required for the processing of the claims and their proper review by the Panel. The Panel concludes, in common with other panels, that the submissions and documents made available to it and the additional information obtained by it have permitted a thorough and fair determination and evaluation of each of the claims. Consequently, the Panel finds that it is not necessary to hold oral hearings.

15. At the direction of the Panel, technical missions were sent to Kuwait and to Winchester, Virginia, in the United States of America, 4/ to investigate certain factual and valuation issues and to carry out on-site inspections. Six such missions took place between August 1998 and June 1999. In June 1999, one of the Panel members, Commissioner Jacovides, participated in one such mission to Kuwait. The missions to Kuwait also included meetings with PAAC and the Government of Kuwait's advisers, interviews with certain claimant witnesses, inspection of documents and visits to sites of physical damage and reconstruction. The findings of each mission are set out in the relevant sections of this report. The Panel has also reviewed videotape evidence submitted by the Government of Kuwait.

III. THE LEGAL FRAMEWORK

A. Applicable law

16. The law generally to be applied by the Panel is found in article 31 of the Rules. This provides that the Panel shall apply:

> "Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law".

17. The principal substantive rule applied by the Panel is paragraph 16 of Security Council resolution 687 (1991). In this, the Security Council declared Iraq to be liable under international law "for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

18. The Panel has taken note of certain findings contained in the reports of other panels of Commissioners, which have been approved by the Governing Council, regarding the interpretation of relevant Security Council and Governing Council resolutions and decisions, as well as the reports of the Executive Secretary issued pursuant to article 16 of the Rules and the responses to them.

B. The directness requirement

19. The Panel construes the requirements of paragraph 16 of Security Council resolution 687 (1991) as meaning that all loss or damage directly caused by Iraq's invasion and occupation of Kuwait is in principle compensable and, correspondingly, that any loss or damage not so caused is not compensable.

20. The Panel has also taken into account the Governing Council's guidance on the interpretation of these requirements, notably as set out in decisions 7 5/ and 15. 6/

21. Paragraph 34 of decision 7 provides as follows:

> "These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention".

22. Paragraph 6 of decision 15 confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait", in relation to which claimants will have to prove that a loss is "direct". Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct".

23. The Panel finds that there is ample authority in international law, including the reports of other panels, 7/ to support the view that a "direct loss" in these circumstances is one which, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. This is the test of causation that the Panel has applied to these claims.

C. Mitigation

24. In assessing the first instalment claims, the Panel has borne in mind the duty of the injured party to take all reasonable measures to avoid, diminish or mitigate the damage resulting from Iraq's invasion and occupation of Kuwait, 8/ and finds that the reasonable costs of so doing are themselves compensable.

IV. CONSIDERATION OF COMMON LEGAL ISSUES

A. Approach

25. Many of the legal issues raised in the first instalment claims arise more than once. The Panel therefore finds it appropriate to report first on issues common to several claims and then, in the light of these common considerations, to examine and report on each claim individually. The Panel now turns to such common legal issues.

B. Property losses

26. As to property losses, the Panel notes that in the first instalment claims there are 10 claims totalling US$494,622,998 for loss of real property and there are 16 claims totalling US$93,667,608 for loss of tangible property.

27. Some claimants assert that their premises were occupied by Iraq. All claimants provide evidence of loss, damage or destruction by way of witness statements, damage assessment reports and/or photographs or videotapes. Understandably, much of this evidence dates not from the occupation period itself, but rather from the period after liberation, when Ministry or other Government of Kuwait personnel were able to re-enter the premises of the various Ministries or other Government entities, as the case may be.

28. The Panel has also taken into consideration the Farah report, 9/ which sets out in detail 10/ the level of damage and destruction found after liberation. The report noted that the damage, while generally minor from a structural point of view, included significant damage to walls and installations. It also noted widespread vandalism and looting of equipment and furnishings.

29. The Panel is accordingly satisfied that the evidence submitted in support of the claims for property losses is sufficient to demonstrate that the losses were direct, falling within the provisions of paragraph 34 of decision 7 11/ and those of paragraph 13 of decision 9. 12/

30. Accordingly, the Panel recommends compensation for such losses, subject to their verification and valuation carried out in the manner described in pa agraphs 109 to 115 below. In relation to claims for vehicles, the Panel reviewed a motor vehicle valuation table submitted by the Government of Kuwait that lists the value of a wide range of motor vehicles in Kuwait as at 1 August 1990. After independent inquiries were made by the expert consultants as to the accuracy of this table, the Panel, in common with other panels, accepted it. 13/

C. Relief paid to employees

31. At the outset it is necessary to make it clear that the discussion in this section, and the amounts examined in it, relate not only to the first instalment claims, which are the principal subject of this report, but also to the other "F3" claims. This explains the large size of the totals involved.

32. Thirty-six of the sixty-two "F3" claimants seek compensation for relief payments made to the Kuwaiti and Gulf Cooperation Council ("GCC") employees of the Government of Kuwait. The payments amounted to the salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods. Each such claimant seeks compensation in respect of its own employees. These employees, some of whom remained in Kuwait during the occupation and emergency periods and some of whom left after Iraq's invasion and occupation of Kuwait, did not receive their regular salaries during those periods. The Government made the relief payments in a series of lump-sum payments commencing after liberation, and claims the amounts so paid. The total amount of the compensation sought for these payments in all the "F3" claims is US$2.03 billion and the number of employees in respect of whom such claims are made is around 100,000.

33. The facts surrounding each of these claims are sufficiently similar for the Panel to consider them together. The amounts claimed constitute a not insignificant percentage of the total compensation sought by the Government of Kuwait. The Panel has therefore found it appropriate to set out its consideration of these claims in detail.

34. The Government supplemented each of these claims by submitting in May 1998 additional information that included the following background:

> "In 1991, Kuwait's Council of Ministers directed, in partial relief for the major losses suffered as a result of Iraq's invasion and occupation, that Government organizations should pay the salaries that their Kuwaiti and GCC employees would have earned during the seven-month occupation period ... and three-month recovery period".

35. Paragraph 36 of decision 7 provides in part as follows:

> "[P]ayments are ... available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

36. The Panel finds, on the basis of the considerable evidence now made available to it, that the payments for which the claimants seek compensation were made to compensate for the loss of the employees' financial support during the occupation and emergency periods. Such payments constitute payments made or relief provided to others within the meaning of paragraph 36 of decision 7 and are thus in principle compensable.

37. In assessing the amount of compensation to be paid, the Panel has borne in mind the number of employees concerned and the impossibility of calculating the actual entitlement of each individual. It has therefore proceeded on the basis of calculating the compensation payable in respect of the employees by way of an average individual entitlement (the "entitlement"), using information provided by the claimants and the Government so as to ensure that the entitlement is as representative as possible.

38. The two main factors determining the entitlement are the length of the period for which payment of compensation is justified and the amount of salary which would have been received by each individual during that period, less appropriate deductions as explained in paragraphs 41 to 48 below.

39. With respect to the first factor, the Panel finds that compensation should be awarded based on the period that the employees were reasonably unable to work. Recalling that the positions of the employees were suspended, not terminated, the Panel concludes that it was usually not possible for the employees to resume their positions until the end of the emergency period. The employees were thus reasonably unable to work during both the (seven-month) occupation period and the (three-month) emergency period, a total of ten months.

40. With respect to the second factor, the first step undertaken by the Panel is to compare the monthly amounts ordinarily received by way of salary by the employees and the amounts actually paid retrospectively. 14/

41. The Panel notes that the Government of Kuwait operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the "Social Security Fund"). These contributions are calculated as a percentage of salary and the contributions of the employees, being five per cent of gross salary, are deducted at source from the salaries paid to them. As part of the first step described above, the Panel requested the Government to confirm whether the amounts paid to the employees and claimed as relief took into account the employees' contributions where necessary and whether there had been any loss of benefits to the employees. The Government responded that there had been no loss of benefits, and that some

but not all claimants had accounted for the contributions by paying to the employees only their gross salary less the five per cent deduction. The Panel has taken the Government's response into consideration and reviewed it in light of the evidence provided in support of each claim. The Panel has found that suitable account has been taken in a number of claims. The Panel has therefore determined that an adjustment should be made to the amounts claimed in cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for.

42. In order to ensure that the entitlement accounts for the employees' true losses, as a second step the Panel considers and brings into account the employees' entire financial receipts (including the benefits received from relief programmes) and expenditures over the compensable period. Furthermore, the Panel has applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses. In other words, "saved" expenses, that is, expenses that the employees would ordinarily have incurred if Iraq's invasion and occupation of Kuwait had not taken place, but did not in fact incur during the period for which compensation is recommended, fall to be deducted from the entitlement.

43. In order to ascertain what other relief payments were made and what expenses the employees might have "saved" during the period, the Panel issued Procedural Order 15 in respect of all relevant first instalment claims, seeking information in this connection. A comprehensive response was received, which provided a model of the average Government employee covering the amount and nature of his or her income and expenditure and the benefits obtained by him or her through policies implemented by the Government of Kuwait during the period.

44. This response showed that the pre-invasion levels of consumption in Kuwait were very high, exceeding on average the average Government employee's monthly salary. 15/ It also described a wide-ranging programme of relief payments. 16/ The Panel has taken this information into account. 17/

45. The Government submitted that only a few employees who left Kuwait could demonstrate that their costs outside Kuwait exceeded the relief received and that these employees have made individual claims before the Commission. With regard to those who did not leave Kuwait, the Panel assumes that any losses in respect of additional costs incurred could similarly have been the subject of claims before the Commission. Accordingly, the Panel assumes that additional living expenses and the relief paid in respect of them need not be taken into account when calculating the employees' true losses.

46. In the light of the above considerations, the Panel finds that deductions for "compensation received elsewhere for the same loss" should be made in respect of the free food and utility services provided in Kuwait over the period above. 18/

47. The Panel further finds, from the model provided by the Government of Kuwait, that the employees who were outside Kuwait during the period did indeed "save" certain expenses in Kuwait. 19/ That is, they did not incur a proportion of ordinary and anticipated living expenses over the period.

48. On the basis of the matters noted in paragraphs 46 and 47 above, the Panel recommends a deduction of 60 per cent from the amounts claimed. That is, the Panel recommends a total award of 40 per cent of the relief paid to employees and claimed in each of the relevant "F3" claims, subject to verification of the amounts claimed and the Panel's assessment of the evidence presented. 20/ Accordingly, the Panel recommends an award to each respective claimant calculated in this manner.

D. Loss of revenue

49. A number of the Government of Kuwait's claims seek compensation for the loss of revenue that would have been earned by the relevant claimant during the occupation, emergency and subsequent periods. The facts and circumstances of each claim vary according to the nature of the revenue-generating activity, but the basic question of the compensability of the Government's loss of revenue is relevant to all such claims, and the Panel has therefore considered the question as a common legal issue.

50. The Panel has considered whether losses of the Government of Kuwait's revenues are compensable in accordance with paragraphs 1 to 4 of Governing Council decision 9. 21/ These paragraphs state that the propositions and conclusions contained therein "shall apply to compensation for the loss of earnings or profits and other business losses covered by Security Council resolution 687 (1991)" and, after noting the liability of Iraq for direct losses, continue that "[u]ltimately it will be up to the commissioners to identify the applicable principles and apply them to the circumstances of particular cases".

51. The Panel is satisfied that Iraq's invasion and occupation of Kuwait led to the interruptions in Government services complained of, but that, by reason of the diversity of economic factors bearing upon each case, the determination of any revenue losses suffered has to be made separately for each claim.

52. The Panel will discuss in section VI below, in connection with the first instalment claims, whether individual revenue losses are compensable

and, if so, the measure of compensation and the time period in respect of which compensation should be paid. The Panel finds that the time period is that during which the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has considered such time periods by reference to historical revenue trends and notes that the periods may in some cases extend to several years.

53. The Panel appreciates that acceptance of a loss of revenue as a compensable claim assumes that the revenue-generating activity would have continued at the same general level if Iraq's invasion and occupation of Kuwait had not occurred. It is, of course, true that all revenue collection depends upon some activity by a third party, e.g., a licensee seeking a licence for which he or she must pay. But the fact that the collection of such revenue is predicated upon the action of a third person cannot be seen as breaking the chain of causation between Iraq's invasion and occupation of Kuwait, on the one hand, and the particular loss of revenue, on the other. This is because the third party's action belongs to a class of conduct the continuation of which in periods of normality can reasonably be expected. Losses of revenue arising from the fact that fines or other penalties were not generated during the occupation and emergency periods are also to be treated in the same manner as other claims for loss of revenue and are to be valued accordingly.

54. In order to have a basis for assessing the extent and nature of revenue that could have been expected to be earned and that which was in fact earned, and to assist it in the consideration of the individual losses of revenue described below, the Panel issued Procedural Order 4 to obtain information as to revenue earned by relevant claimants in the period from 1 July 1985 to 30 June 1995. The information thus provided has been taken into consideration by the Panel in reaching the recommendations in section VI below.

55. In calculating revenue losses, the Panel has again applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses.

56. This principle involves two considerations: first, that any expenditure which would have been incurred in the generation of the revenue lost, but which has not been so incurred, should be brought into account to reduce the claimed loss; 22/ second, where the Panel has identified extraordinary or increased revenues flowing from Iraq's invasion and occupation of Kuwait, such revenues should be accounted for in like manner. The Panel has therefore taken any such extraordinary income into account in connection with the loss of revenue claims.

57. The Panel has also taken account of amounts going to generate revenue in one Ministry or Government entity that would have been paid by another.

This is because any such loss of revenue by one Government entity is an expense saved by the entity that would otherwise have paid it.

58. The Panel notes that the revenue of the Government of Kuwait may have been affected by changes in the population composition of Kuwait after liberation and has considered the impact of such changes where necessary.

E. Contract interruption losses

59. The Government of Kuwait has presented a number of claims for compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990 23/ and which had been concluded between a Government entity and third-party contractors, generally for the construction of a building or facility. The work was usually under way at the time of the invasion of Kuwait. In most cases, the relevant Government entity asserts that the contractor refused to complete the remaining contract work without extra payment to cover the costs of site restoration, increases in the cost of materials and other cost increases in the post-liberation period. The claimants usually negotiated a revised price with the contractors.

60. "Contract interruption losses" therefore encompass claims for increased costs under re-negotiated contracts, reflecting in certain cases additional work, such as site restoration. In considering these losses, the Panel, like the "F1" panel, 24/ has noted the obligation on each claimant, arising from article 35(1) of the Rules, to demonstrate that a particular loss is eligible for compensation. In the context of contract interruption losses, therefore, the claimants must demonstrate that the price increases were a direct result of Iraq's invasion and occupation of Kuwait.

61. Recalling the obligation upon the claimants under article 35(3) of the Rules to submit sufficient evidence to prove their losses, the Panel sought information as to the conditions pertaining in the construction and building industry both before and after the occupation period, including information as to the number and nationality of construction workers in both periods. The Panel has considered such information in arriving at its recommendations on the first instalment claims set out below.

62. The Panel finds that, following the liberation of Kuwait, there was a general increase in the price of goods and services in Kuwait and that such increase was the result of many factors, the precise effect of which it is impossible to identify.

63. In relation to only three causes of increases in price has the Panel been able to determine that the causal link was "direct". These are price rises shown to be linked specifically to:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs. 25/

64. The Panel has determined that price increases caused by these factors are compensable. As regards other causes of price increases, the Panel was unable to conclude that they were a direct result of Iraq's invasion and occupation of Kuwait.

F. Buildings not intended to be rebuilt

65. The Government has presented a number of claims for compensation for damage to buildings, usually schools or mosques, which will not be rebuilt principally because of their location near the border between Kuwait and Iraq or on Failaka Island. The claim is usually made for the estimated cost of reconstructing the building.

66. The Panel finds that the damage to such buildings is, in principle, compensable. In particular, the Panel finds that Iraq is liable for damage caused by it, even if the Government of Kuwait decides not to rebuild or repair the damage. However, the Panel has awarded as compensation the cost of reconstruction only in cases in which it is satisfied that the relevant building was incapable of repair. In other cases, only the cost of repair is awarded. In appropriate cases, the Panel has made adjustments for such items as depreciation, wear and tear, and reduced maintenance expenses arising from not having to maintain the building in the future. The compensation is measured by the cost at such time as it would be reasonable, in the ordinary course of events, to expect reconstruction or repair to have taken place.

G. Damage to leased premises

67. The Government of Kuwait has presented a number of claims for the cost of repairing damage to premises which it occupied as tenant at the time of Iraq's invasion and occupation of Kuwait.

68. The Panel has noted that, in common with a number of legal systems, such repairs may legally have been the responsibility of the landlord pursuant to the lease and/or Kuwaiti law. To require the landlord to undertake the repairs and subsequently claim the cost from the Commission or (if the landlord was unwilling or unable to undertake the repairs) to require the Government of Kuwait to undertake the repairs and reclaim the cost from the landlord and not the Commission would, in the circumstances of Iraq's invasion and occupation of Kuwait and the widespread damage to the Government's facilities, be too technical and rigid an approach. The Panel finds that where premises leased to the Government were damaged as a result of Iraq's invasion and occupation of Kuwait, the cost of the repairs should be awarded to the person who paid for them, provided that the other party to the lease has not been awarded compensation for the same loss.

69. In order to ensure that the Commission recommends payment only once for repairs to each of the damaged buildings in question, the Panel instructed the secretariat to examine the claims of the relevant landlords and advise the Panel of any duplication of claims in respect of the repairs. An award has been made by the Panel only where no duplicate claim has been awarded by the Commission.

H. Contractual provisions allowing penalties for late completion or other breaches of contract

70. The Government of Kuwait has presented a number of claims for compensation for the full price of contracts for repair or reconstruction made after the end of the occupation period, although there were provisions within such contracts for a reduction in the contract sum for late completion or other breaches. Although it is at times apparent that a situation may have existed giving rise to the right to use such provisions, in most instances there is no evidence of advantage having been taken thereof.

71. The Panel has considered the effect of such provisions, and of whether or not they were invoked, on the extent of compensation payable. The Panel notes the obligation on each claimant to obtain a reasonable price for remedial works. Having regard to this obligation, and as part of the overall determination of the reasonable cost of the repair or reconstruction, the Panel finds that where the evidence shows that a

reduction in the contract sum could have been insisted on, a reduction in the claim to that extent is warranted.

I. Temporary repairs followed by more permanent repairs

72. The Government of Kuwait has presented a number of claims for the cost of urgent work undertaken to effect temporary repairs (for example, the claim in relation to the Kuwait Emergency Reconstruction Office). The cost of subsequent and more permanent repair has also been claimed in many cases, sometimes found in the same claim as the temporary repairs and sometimes in a different claim.

73. The Panel has considered whether and to what extent the assessment of loss should take into account the cost of such temporary repairs. Many of the Government's facilities and services suffered a considerable amount of damage as a result of Iraq's invasion and occupation of Kuwait. In many cases, and particularly in the immediate post-liberation period, it was essential rapidly to restore these facilities and services to at least a minimum operating capacity. In other cases, temporary repairs prevented greater damage being caused to the Government's facilities and services and thus helped to mitigate future damage. The Panel therefore considers that it was reasonable for the Government to address required emergency repairs as priorities and then to undertake permanent repairs at a later time. The Panel finds that the cost of temporary repairs which were reasonably necessary in the circumstances is compensable and has proceeded on this basis.

J. Temporary premises

74. The Government of Kuwait has presented a number of claims for the cost of renting residential or business premises in Kuwait during periods in which the construction of new premises or the repair of existing premises was delayed as a result of Iraq's invasion and occupation of Kuwait. The claim for compensation is for the cost of renting alternative premises for varying periods following liberation.

75. The Panel determines that in principle such costs should be awarded for a reasonable period following liberation. In each specific case, consideration has been given to the nature of the damage and to the time normally likely to be necessary to effect site restoration, repairs or to complete construction. Associated with the latter question is that of the attribution of the cause for the relevant delay. In this regard, the Panel finds that the principles set out in paragraph 63 above are pertinent.

76. The Panel similarly finds that the costs of providing temporary housing to employees who, before the invasion, were provided with

accommodation by a Ministry, is compensable to the same extent as the costs of temporary premises.

77. The Panel has sought to ascertain the reasons for the delay in the construction of new buildings and has scrutinised the evidence to identify both the original contractual date for completion of the new premises and the date for completion under the resumed contract. It has done so to ensure that delays arising other than from Iraq's invasion and occupation of Kuwait, including pre-invasion delays, are not considered in the ascertainment of the loss.

K. Temporary headquarters outside Kuwait

78. The Government of Kuwait has presented a number of claims for the expenses of operating offices outside Kuwait during the occupation and emergency periods and for some short period thereafter.

79. The Panel recalls that as a result of Iraq's invasion and occupation of Kuwait, many of the Government's usual operations in Kuwait could not continue there. The Government was therefore obliged to conduct its operations elsewhere. Further, in some situations, the operation of offices outside Kuwait prevented greater damage being caused to the Government and to the people remaining in Kuwait. The Panel thus finds that the cost of operating offices outside Kuwait is compensable where the decision to establish such operations was reasonable in the circumstances. In each such claim, however, the Panel has been careful to ensure that only reasonable costs are allowed and it has deducted expenses that would ordinarily have been incurred in Kuwait if Iraq's invasion and occupation of Kuwait had not occurred.

L. Cost of returning employees to Kuwait

80. The Government has also presented a number of claims for the cost of returning its employees to Kuwait after liberation to enable them to resume work. Most of these employees were non-Kuwaitis who left Kuwait following Iraq's invasion and occupation to return to their home countries.

81. The Panel finds that the reasonable costs of returning employees to Kuwait are compensable:

(a) under paragraph 34(b) of decision 7 where the cost of returning employees is a necessary consequence of evacuation; or

(b) where the return of the employees was a reasonable step in mitigation of loss (for example, where it is shown that the cost of

returning an employee is less than the cost of hiring and training a new employee).

82. In each case the Panel has considered whether the costs were reasonable and were wholly incurred as a result of Iraq's invasion and occupation of Kuwait. In particular, the Panel has taken into consideration such factors as whether the employees would have been granted home leave during the period in question and whether the employees travelled in a class higher than appropriate. 26/

M. Pre-paid rent

83. A number of the first instalment claims seek compensation for rent paid in advance on office or other premises ("pre-paid rent"). The claimants maintain that no benefit for the amounts paid was derived during the seven month occupation period and during the months following liberation because the Government was unable to use the premises. In each such case the Government claims the amount of the pre-paid rent for the period during which it is asserted that no benefit was obtained.

84. The Panel finds that compensation should be awarded where rent has been pre-paid on premises but only for the period that the Government of Kuwait was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. 27/ The measure of compensation should be the amount of pre-paid rent referable to that period, since such rent is an accurate indicator of the value of the benefit lost. The Panel has considered in each first instalment claim whether the claimant has demonstrated that its inability to use the premises for the period claimed was a direct result of Iraq's invasion and occupation of Kuwait, such as would have been the case if, for example, Iraq had occupied the premises in question.

85. The Panel is satisfied that there were no means by which the Government of Kuwait could have recovered the pre-paid rent and that, therefore, there has been no failure to mitigate on the part of the Government.

N. Avoiding over-compensation

86. The Panel notes that the Government of Kuwait's activities in Kuwait were interrupted during the occupation and emergency periods and it would appear, therefore, that a proportion of usual Government expenditure may not have been incurred. The Panel has begun examining and will continue to examine throughout its review of the F3 claims whether and to what extent to bring into account any such unincurred expenses by way of set-off against the amount of compensation awarded to the Government.

87. In relation to the first instalment claims, the Panel has adopted and applied the following principles:

(a) loss of revenue claims should be awarded net of the identifiable expenses which would ordinarily have been incurred in the generation of that particular revenue (including, where appropriate, salaries); 28/

(b) where it can be established that expenses were saved as a result of damage to or destruction of assets, adjustments should be made to reflect this (see, for example, the claim for quality control testing equipment in the claim of the Ministry of Commerce and Industry at paragraph 317 below); and

(c) in claims for the cost of operating temporary offices outside Kuwait, considered at paragraphs 78 and 79 above, adjustments should be made to reflect any expenses saved by not operating offices in Kuwait.

88. The Panel does not consider it appropriate to deal with the more general question of unincurred expenses, which have not been brought into account as set out in the preceding paragraph, in a piecemeal fashion in the first instalment claims. It prefers, instead, to deal with the matter in a single consideration which can best take place in the context of the claim relating to the Kuwait Investment Authority 29/ to be reviewed in the third instalment. At that time the Panel will wish further to consider the following factors:

(a) that not all the Government's losses are compensable by the Commission, and not all Government losses have been claimed;

(b) that the Panel's recommendations in relation to certain claimed losses may include reductions for evidentiary reasons;

(c) that any reduction in Government expenses may have had a correlative effect on the benefits that the Government and its citizens would otherwise have enjoyed; and

(d) that revenue claims have been submitted by Kuwaiti entities in other claim categories and, in some cases, compensation may have been awarded by the Commission.

89. In this connection, the Panel requested from the Government of Kuwait, amongst other things, information as to the historic income and expenditure position of the Government and the Kuwaiti economy as a whole, a history of the financial reserves of the Government for the period 1986 to 1996, details as to claims made to the Commission for loss of revenue

and an indication as to revenue losses for which no claim has been lodged with the Commission.

90. The Government of Kuwait submitted a detailed response which provided extracts from its national accounts and the bases upon which its financial information is recorded, a description of budgets and procedures, explanations as to the bases of presentation of financial accounts and statistics, and details of revenue claims before the Commission. The Panel notes that the Government keeps confidential certain information regarding its financial reserves and assets and that only limited secondary sources of such information are available.

91. The adjustments in the first instalment claims in relation to matters falling within sub-paragraphs 87(b) and 87(c) above will be borne in mind by the Panel when eventually considering the more comprehensive question of the overall position of the Government as set out in paragraph 86 above.

O. Claims preparation and claims processing costs

92. The Government of Kuwait has presented a claim for claims preparation costs (being the fees of attorneys and other professional persons, and costs of support and secretarial staff, reproduction, and communication facilities). 30/ This claim aggregates such costs incurred in relation to the preparation of virtually all "F3" claims. It also includes the Government's own claims processing costs (being the cost of the administrative work involved in dealing with claims, including the establishment of necessary infrastructure such as PAAC). It is not clear which portion of the claim is for claims preparation costs and which portion is for claims processing costs.

93. The Panel has been notified by the Executive Secretary that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to the claim for such costs.

94. As to claims processing costs, the Panel notes that decision 18 31/ provides for compensation for such costs by allowing for the deduction of a set fee from payments made to claimants. In light of this decision, the Panel considers itself bound not to recommend any additional compensation in respect of claims processing costs.

P. Exchange rate

95. The claims for repair costs or replacement materials involve losses incurred in Kuwaiti dinars ("KD") or other currencies, but in all cases converted into and claimed in United States dollars. The Commission issues awards in United States dollars. The Panel must therefore consider whether the exchange rates used by the claimants are appropriate.

96. The Government of Kuwait states that, generally, when a single payment was made the exchange rate used was the rate on the date of payment; when many payments were made the rate was the average rate or rates for the relevant period over which the payments were made; and, for future payments, the rate was the average rate for the most recently available twelve-month period.

97. The Panel finds that such an approach is reasonable in the circumstances. In some cases other factors operate. These are described in the recommendations for the claims concerned.

Q. Interest

98. The Government seeks interest on the principal claim amount in respect of each first instalment claim. Decision 16 provides in part that "interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council has stated that it will address the methods of calculation and payment of interest in the future. It is thus for the Panel to determine only the date from which interest is to run.

99. The Panel has considered how for the purposes of calculating interest the date of a specific loss is to be determined. It finds that, in the context of the enormous number of individual claim items, within several loss types, a specific determination for each claim item is impractical. The Panel has, therefore, concluded that for this purpose all losses should be deemed to have occurred on one single date.

100. The Government of Kuwait itself identified two possible dates at two different stages of the proceedings. The Government first selected, in its "Summary Report of Government Claims" submitted in July 1994, 26 February 1991 as the relevant date. This was on the basis that it was the last date on which Iraq could have taken or damaged assets, and that the Government was entitled to interest from that date, regardless of when expenditure was incurred on repairing or replacing the asset. A further reason was that since many of the losses occurred near the end of the occupation, the date of liberation was closer to the date of the actual losses than any other.

In a subsequent submission, however, filed in May 1998, the Government amended its first submission to provide that interest should accrue from 2 August 1990, the date on which Iraq invaded Kuwait.

101. The matter has to a large extent already been examined in the "Report and Recommendations made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (the "WBC Claim")" 32/ wherein the panel took the view that Kuwait did not suffer loss until it actually disbursed the costs of repair or reconstruction. The Panel shares this view and is therefore unable to accept Kuwait's second submission, that interest should commence on 2 August 1990.

102. Having regard to the varying dates of loss and the need to select one date for interest purposes, the Panel determines that, in all the circumstances, the date of loss for calculation of interest is 26 February 1991. 33/

V. VERIFICATION AND VALUATION

A. The importance of evidence

103. The Rules direct that each claim must be supported by sufficient evidence. Thus, article 35(1) of the Rules prescribes that:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

104. In relation specifically to governmental claims, article 35(3) provides that:

> "... such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss".

105. Pursuant to these provisions, each claimant has submitted a considerable body of documentary and other evidence in support of its claim. Some of this material was filed with the statement of claim itself; substantial further material has been provided in response to questions raised by the Panel; and still other material has been submitted to the Commission and reviewed (in some cases during on-site inspections) in Kuwait and elsewhere.

106. The evidence submitted by the claimants, including that additionally requested by the Panel, comprises, in most cases, a sample of the documents available. The size of the sample has been determined by reference to the nature of the loss and the character and quantity of the evidence available.

107. The Panel has addressed a number of specific requests to various Ministries and other Government entities for additional information and documents in their possession. These requests took the form of procedural orders, and other requests issued pursuant to procedural orders, of which to date some 100 have been issued. The responses to each such order or request, and their accompanying documents, have been duly considered by the Panel and its expert consultants.

108. The Panel has noted the claimants' general assertions that physical damage and destruction during Iraq's invasion and occupation of Kuwait included the destruction of large numbers of documentary records, though the degree of destruction varied from claimant to claimant. As a result, certain elements of claims are supported only by witness statements or by reports without underlying primary documentation. The Panel, in the observance of due process and by the issue of procedural orders to claimants, has on occasion requested further evidence from the claimants in order to ascertain the degree of destruction of records with a view to assessing the evidence as a whole.

B. The procedures adopted by the Panel to verify and value the first instalment claims

109. The principal tasks of the Panel are to assess the evidence with a view to determining whether the claimed loss or damage has in fact occurred and, in light of that determination, to assess the amount of compensation to be recommended in respect thereof.

110. In carrying out these tasks, one of the prime objectives of the Panel is to ensure consistency in the examination of the material and the resulting recommendations. This cannot be achieved other than by a systematic approach rigorously pursued in accordance with the requirements of the Rules. For this purpose the Panel has established three series of steps.

111. The first is a general verification and valuation programme applicable to all claims. This sets out procedures for the verification and valuation of the claims, including an initial assessment of the character and probative value of all the evidence originally submitted in support of each claim.

112. The second series of steps comprises specific verification and valuation programmes. These set out more detailed procedures for certain loss types, namely, contract, real property and tangible property losses. They include the identification of particular documents needed to establish the existence and terms of contracts and the title and character of real and tangible property as well as those needed to value the losses claimed.

113. The third series of steps comprises supplemental verification and valuation programmes. These set out further detailed procedures for each loss element and were designed at an early stage of the review of a claim to meet its particular character. The programmes identify any additional evidence and other information beyond that originally submitted by the claimant which the Panel considers necessary for a proper review of the claim. This step has not been carried out if the loss element under review falls below the level of materiality which is described below.

114. In applying these programmes the Panel has systematically scrutinised the evidence according to its type, date, 34/ quality and quantity and has made consistent adjustments to reflect the extent to which the evidence is not sufficient.

115. Any attempt by the Panel to set out in detail in relation to the individual claims before it the precise manner in which it has found that the evidence is sufficient or not sufficient would involve it in a complex exposition of a very large volume of material and would not be feasible within the confines of a panel report. Moreover, the weighing of evidence is not an exact science but necessarily involves some exercise of judgement or discretion by the Panel. The Panel has, therefore, normally not gone beyond a statement of its conclusions in each case.

C. Evidential status of the reports of the claimants' accountants and engineers

116. Each claim contains an accountant's report and a number of them contain an engineer's report, in all cases commissioned by the Government of Kuwait.

117. The accountant's reports include descriptions of the claimed losses, summaries of the valuation methodologies adopted and schedules showing the derivation of the amounts claimed.

118. The engineer s reports contain evaluations of the repair and restoration works, commenting on the extent to which the works were required to repair invasion-related damage, the scope of works including enhancements, the degree of documentary support for the work said to have been done, the avoidance of duplication within the "F3" claims and, where

contract interruption losses are claimed, a comparison of the work done under the pre-invasion and post-liberation contracts.

119. The Panel notes that all of the reports have been commissioned by the Government of Kuwait for the purpose of the submission of its claims to the Commission. They do not, therefore, constitute original or primary evidence, in contrast to, for example, written contracts, receipts and invoices. As such, the Panel has treated these accountant's and engineer's reports as supporting documents and not as primary evidence of the matters of fact asserted in them.

D. Materiality

120. The sheer bulk of the claims before the Panel obliged it to focus on those parts of the claims 35/ which carry a greater risk of significant overstatement. The line between these parts and others is called the "level of materiality", with those parts of the claims above the level of materiality being called "material" and those below it "not material".

121. The Panel has set the level of materiality at US$500,000. However, the Panel has reduced the level of materiality in the following cases:

(a) where it is necessary to ensure the examination in sufficient detail of at least 80 per cent of the total value of any loss element across the "F3" claims, the level of materiality has been reduced accordingly, but not below US$100,000;

(b) for claims with a value below US$5,000,000 (excluding interest, claims preparation costs and any other part of the claim that the Panel finds not to be a direct loss) the level of materiality has been reduced to 10 per cent of the total value of the claim, but not below US$100,000; and

(c) in exceptional instances in which the Panel has found it appropriate to do so.

122. The Panel has determined that the use of these materiality levels will ensure a detailed review of over 99 per cent of the principal claim amount of the "F3" claims. The Panel considers this to be a necessary and therefore suitable approach to achieving its objective: that is, properly to review the "F3" claims within the time allotted for that task.

123. While the general and (where relevant) specific verification and valuation programmes have been carried out in the review of all loss elements, a supplemental verification and valuation programme has been designed and followed only for material loss elements. Further, so far as the non-material loss elements are concerned, the Panel has not requested any documentation other than that originally submitted by the claimant. In

assessing the sufficiency of the evidence submitted in support of these loss elements, the Panel has regard to the fact that the claimant has not been requested to submit additional evidence and that to conclude that the evidence submitted is insufficient may unfairly penalise the claimant concerned. The Panel therefore assesses the sufficiency of the evidence in support of these loss elements in two stages; first, by applying the criteria described at paragraphs 114 and 115 above in the usual manner and, second, by adjusting its conclusions to reflect the average sufficiency of all the evidence submitted in support of the claim concerned and/or the relevant loss element, as appropriate.

E. Reporting on the verification and valuation of the first instalment claims

124. The expert consultants have provided the Panel with comprehensive reports on the results of the verification and valuation programmes for the first instalment claims, indicating their opinions as to the extent that each is supported by the evidence and the value to be given to each. The Panel has considered these reports in detail prior to coming to its conclusions and recommendations. These are set out in section VI below. The Panel is satisfied that each of the recommendations which it has made is reasonable in all the circumstances.

125. In explaining in any given case why a claim or part thereof has been reduced or rejected the Panel has sometimes used one or more of the following shorthand expressions, the weight of which will necessarily vary from case to case:

(a) "method of valuation" means that the amount claimed has been reduced because the valuation method used by the Government of Kuwait is not appropriate under the circumstances of the loss or the Panel has used an alternative method of valuation (such as the use of book value rather than the use of depreciated replacement cost);

(b) "overstatement" is used where an error of fact or of calculation is discovered;

(c) "inadequate procurement process" is used where the Government has failed to use an appropriate procurement process to ensure that the loss is kept to a minimum. In many cases, the appropriate procurement process would involve resort to competitive tendering, but such procedures may not be appropriate in the context of urgent or emergency repair work, for example;

(d) "enhancement" is used where the Government in replacing damaged or lost items has obtained an asset that is better than the one previously used, but has failed to give adequate credit for the improvement;

(e) "inadequate accounting for depreciation" is used where the Government has not properly considered the age or the remaining useful life of the asset as at the date of the loss or has used an inappropriate rate of depreciation;

(f) "inadequate accounting for residual value" is used where an amount is likely to be received from the disposal of an asset at the end of its useful life, and that amount is not adequately taken into account;

(g) "saved expenses" is used where the Government has not incurred expenses that it would ordinarily have incurred had Iraq's invasion and occupation of Kuwait not occurred, or has incurred reduced expenses as a result of the invasion and occupation; and the claim has not been correspondingly reduced. The matter is more fully discussed at paragraph 87 above; and

(h) "insufficient evidence" is used where the Panel considers that the claim must be reduced or rejected because it is not supported by sufficient evidence. 36/

VI. THE FIRST INSTALMENT CLAIMS

A. Introduction

126. The Panel now turns to consider separately each of the first instalment claims. In this section the Panel sets out its consideration of the asserted losses and presents its recommendations for compensation in respect of them.

127. The Panel has proceeded to review the first instalment claims using amounts rounded to the nearest US$1,000. Therefore, all recommended compensation amounts are presented in multiples of US$1,000, except where the Panel recommends payment in the full amount claimed.

B. Public Authority for Youth and Sports

Government Claim No. 18, UNCC Claim No. 5000022

Table 2. Summary Table for Public Authority for Youth and Sports

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	3,748,423	1,516,000	128-130
Other tangible property	4,325,505	2,254,000	128-130
Total	8,073,928	3,770,000	
Interest	1,282,960		

1. Property losses

(a) Real property - US$3,748,423

(b) Other tangible property - US$4,325,505

Scoreboards US$2,530,862
Buses US$1,628,369
Water coolers US$166,274

128. The Public Authority for Youth and Sports ("PAYS") is responsible for promoting the developme t of the youth of Kuwait and of physical fitness in general. PAYS asserts that all of its sports and youth clubs, federations, centres and facilities suffered damage during Iraq's invasion and occupation of Kuwait. PAYS also seeks compensation for the cost of four scoreboards, 167 buses and 255 water coolers purchased to replace those lost during the occupation period.

129. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, and insufficient evidence.

130. Accordingly, the Panel recommends compensation in the amount of US$1,516,000 out of the US$3,748,423 claimed for real property and US$2,254,000 out of the US$4,325,505 claimed for other tangible property.

C. Ministry of Finance - Kuwait Emergency Reconstruction Office

Government Claim No. 2, UNCC Claim No. 5000038

Table 3. Summary Table for Ministry of Finance - Kuwait Emergency Reconstruction Office

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property			
a) Hospitals and clinics	19,557,400	15,355,000	139-141
b) Water distribution system	9,421,366	8,316,000	142-144
c) Emergency road repairs	13,927,023	12,601,000	145-147
d) Electrical power network	39,939,492	35,292,000	148-150
e) Airports	63,673,177	48,169,000	151-153
f) Schools	53,304,590	37,877,000	154-156
g) The National Assembly	61,851,211	39,080,000	157-160
h) Other Government facilities	56,126,287	37,236,000	161-163
i) Airlift of fire-fighting equipment for oil well fires	19,389,711	17,936,000	164-167
j) US Army Corps of Engineers labour costs	44,435,393	41,103,000	168-169
Sub-total	381,625,650	292,965,000	
Other tangible property	7,562,423	7,898,000	170-173
Total	389,188,073	300,863,000	
Interest	61,843,584		

1. Real property - US$381,625,650

131. This claim is for the costs incurred by the Government of Kuwait in relation to the Kuwait Emergency Reconstruction Office ("KERO"), a reconstruction programme set up in early 1991 and managed by the U.S. Army Corps of Engineers (the "Corps"). The purpose of KERO was to perform emergency repairs to Kuwait's infrastructure as soon as possible after the liberation of Kuwait.

132. Work under the programme commenced on 1 March 1991 and concentrated on hospitals and clinics, the water distribution system (including the sewerage system), roads, the electrical power network, airports, schools, and other facilities of the Government of Kuwait (including the National Assembly, the seat of Kuwait's parliament). Work under the programme was substantially complete by August 1992. Costs were also incurred and are claimed by KERO for the air lift of equipment to fight the oil well fires. 37/

133. The Corps acted as the project manager for KERO. The repair work itself was performed by independent contractors pursuant to agreements made

with the Corps. The Government of Kuwait paid the Corps the amount charged to the Corps by these independent contractors together with the expenses incurred by the Corps in managing the project. These latter expenses included the cost of the labour provided by the Corps to produce reports assessing the damage to be repaired and to supervise the repairs.

134. Most of the repair work was performed by eight contractors. These contractors in turn engaged a large number of subcontractors. Given the size of the programme and the number of contractors and subcontractors involved, a significant volume of paperwork was produced. Not all of this paperwork was submitted with the statement of claim. The majority of the paperwork is, however, held by the Corps at its offices in Winchester, Virginia, United States of America. As part of its verification and valuation of the claim, the Panel instructed the secretariat and the expert consultants to inspect these documents. During their mission to the Corps' offices from 16 March 1999 to 26 March 1999, the secretariat and the expert consultants inspected the contents of 170 boxes of relevant documents, and interviewed Corps personnel involved in the programme and others with in depth knowledge of the statutory framework for the Corps' operations.

135. The Panel finds that all of the losses claimed, being for real and tangible property losses, are compensable for the reasons set out in paragraphs 26 to 30 above, subject to verification and valuation. The Panel finds that certain repairs, which were temporary in nature and were followed by more permanent repairs, were all reasonably necessary in the circumstances and, as set out in paragraph 73, are compensable in addition to the permanent repairs.

136. In valuing this claim, the Panel has first considered the reasonableness of the selection of the Corps as project manager. The Panel considers that at the time of the selection of the Corps there were a number of organizations with the resources to undertake a project in the nature of KERO. However, the Panel is satisfied that the use of the Corps did not result in a higher price to the Government than would have been the case using another of the suitable organizations, largely because any other organization would undoubtedly have incorporated an additional premium into its pricing to reflect the risks attached to the project. Further, these organizations may not have received the same level of co-operation and assistance with the task of ordnance clearance that was accorded to the Corps by the U.S. Army. The Panel has duly considered Iraq's argument in its response to Procedural Order 1 that it was unfair for a "belligerent" to act as contractor to the Government. However, the Panel cannot identify any meaningful element of unfairness to Iraq and does not accept this argument. The selection of the Corps as project manager was reasonable in all the circumstances.

137. The Panel has considered the method adopted by the Corps for selecting the contractors to undertake the repair work. In accordance with the duty of mitigation, the work must be shown to have been carried out at the lowest reasonable cost in all the circumstances. Obtaining the lowest reasonable cost usually entails the use of a competitive tendering procedure and the selection of the lowest acceptable bid. The eight contractors set out in paragraph 134 above were initially engaged pursuant to "letter contracts" with the Corps. These contracts covered the contractors' costs of setting up in Kuwait but promised only a limited amount of work. Subsequent work was undertaken pursuant to "task orders". For almost all the work performed by KERO, these "task orders" were awarded using less than full and open competition. On most occasions there was no bidding between the eight contractors. Rather, direct negotiations would occur between the Corps and one of the eight contractors.

138. The Panel recognises that the urgency of many of the needed works was such that to have required the Government to implement competitive tendering procedures would have involved an unacceptable delay in carrying out such works. But this was not the case for all of the works performed by KERO. To determine whether the contracting procedure adopted was reasonable in all the circumstances, the Panel has applied a test which gives weight to the importance of the facility to be repaired and the immediacy of the need for it. The test asks whether the works were of such urgency that resort to competitive procurement procedures could not reasonably be required in the circumstances. The Panel has applied this test to each of the specific projects undertaken. If it considers that a competitive procurement procedure 38/ should have been adopted but was not, then it applies a deduction equal to the difference between the price paid for the project and the price that it calculates would have been paid if the competitive procurement procedure had been adopted.

(a) Hospitals and clinics - US$19,557,400

139. KERO's repairs to hospitals and clinics concentrated on utility systems, air conditioning, water lines, elevators, lighting, boilers, plumbing, broken glass, and the general clean-up of debris.

140. The Panel finds that most repairs to the hospitals and clinics were undertaken pursuant to procurement procedures that were reasonable in the circumstances. The Panel finds, however, that competitive procurement procedures could have been adopted for the general cosmetic repairs to a number of buildings and for some work to administrative offices of the Ministry of Health. As such procedures were not adopted, a deduction has been made for the excess costs incurred. Further adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

141. Accordingly, the Panel recommends compensation in the amount of US$15,355,000 out of the US$19,557,400 claimed for hospitals and clinics.

(b) Water distribution system - US$9,421,366

142. Following liberation, KERO engaged in repairs to damaged water treatment facilities and water and sewer lines to ensure the availability of a basic water supply and water treatment capability.

143. The Panel finds that the procurement procedures used by the Corps were reasonable in the circumstances. The evidence shows, however, that adjustments should be made for inadequate accounting for depreciation (in relation to one contract for the replacement of water pipes and extensive repairs to water treatment facilities) and for insufficient evidence.

144. Accordingly, the Panel recommends compensation in the amount of US$8,316,000 out of the US$9,421,366 claimed for repairs to the water distribution system.

(c) Emergency road repairs - US$13,927,023

145. KERO undertook preliminary repairs to Kuwait's road network pursuant to more than 100 "task orders". These covered repair of bomb craters, removal of abandoned vehicles, repair of bridges, car parks and footpaths and repair and replacement of traffic signs, guard-rails and medians.

146. The Panel finds that competitive procurement procedures could have been adopted in relation to four "task orders" concerning repairs to the car parks and pavements at the National Guard and United Nations buildings. The Panel has made a deduction for the excess costs incurred because such procedures were not adopted. Further adjustments should be made for inadequate accounting for depreciation (in relation to replaced traffic signs, guard rails and medians) and for insufficient evidence.

147. In light of the above, the Panel recommends compensation in the amount of US$12,601,000 out of the US$13,927,023 claimed for emergency road repairs.

(d) Electrical power network - US$39,939,492

148. KERO performed emergency repairs to the electrical power system in Kuwait. This included the repair of substations, overhead transmission lines and underground cables.

149. The Panel finds that the procurement procedures used by the Corps were reasonable in the circumstances but that adjustments should be made for inadequate accounting for depreciation (in relation to the replacement of overhead transmission lines) and for insufficient evidence.

150. In light of the above, the Panel recommends compensation in the amount of US$35,292,000 out of the US$39,939,492 claimed for electrical power network.

(e) Airports - US$63,673,177

151. KERO undertook substantial repairs to the Kuwait International Airport including the repair of runways, airport terminals, hangars and a flight training centre. It also performed some repairs to two air bases.

152. The Panel finds that most of the repairs to the Kuwait International Airport were undertaken pursuant to procurement procedures that were reasonable in the circumstances. However, competitive procurement procedures could have been adopted in relation to the repairs to the flight training centre. As such procedures were not adopted, a deduction has been made for the excess costs incurred. Further adjustments should be made for inadequate accounting for depreciation (in relation to the various buildings that were repaired) and for insufficient evidence.

153. In light of the above, the Panel recommends compensation in the amount of US$48,169,000 out of the US$63,673,177 claimed for the repair of airports.

(f) Schools - US$53,304,590

154. KERO undertook substantial repair work to 197 schools. Some of this work was required to enable a sufficient number of schools to open in the autumn of 1991. A small portion of the cost was incurred in removing unexploded ordnance from school grounds.

155. The Panel finds that the procurement procedures used by the Corps were reasonable in the circumstances. Approximately 40 per cent of the repairs by value were for substantial and permanent repairs such as the replacement of air conditioning systems, the rewiring of electrical circuits and plumbing and decoration repairs. The Panel finds that adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

156. In light of the above, the Panel recommends compensation in the amount of US$37,877,000 out of the US$53,304,590 claimed for repair to schools.

(g) The National Assembly - US$61,851,211

157. The National Assembly is the seat of Kuwait's Parliament. It suffered significant damage as a result of Iraq's invasion and occupation of Kuwait and was totally rebuilt pursuant to the KERO programme. The majority of the repairs were completed between February 1992 and April 1993.

158. The claim in relation to the National Assembly included an amount of US$2,099,443 for the replacement of carpet which should have been classified as a loss of "other tangible property". Further, the claim for "other tangible property" included an amount of US$635,000 for certain real property repairs which should have been included under that loss type. The Panel has thus made a deduction of US$1,464,000 (being US$2,099,443 less US$635,000, rounded to the nearest thousand United States dollars) from the claim in relation to the National Assembly and transferred this amount to the claim for the loss of "other tangible property" set out in paragraph 170 below.

159. The Panel finds that competitive procurement procedures could have been adopted for all of the works on the National Assembly except for the initial clearing of rubble and debris undertaken for safety reasons. The Panel notes the importance to the Government of restoring the National Assembly at the earliest possible time but it does not find that the works were required so urgently as to warrant the omission of competitive tendering procedures. The Panel further notes that the works were delayed pending design finalisation, during which substantial revisions were made to the scheme initially proposed for the repair of the National Assembly. These revisions were made in order to reduce the repair costs. The Panel finds that competitive tendering procedures should have been implemented during this period of delay and has therefore applied a deduction for the excess costs incurred. Further adjustments should be made for overstatement in relation to the design costs, inadequate accounting for depreciation, enhancements, and for insufficient evidence.

160. In light of the above, the Panel recommends compensation in the amount of US$39,080,000 out of the US$61,851,211 claimed for repairs to the National Assembly.

(h) Other Government facilities - US$56,126,287

161. KERO undertook repairs to a number of other facilities of the Government of Kuwait including Ministry buildings, fire stations, police stations, and National Guard facilities. It also constructed temporary offices for the Government of Kuwait at Bayan Palace.

162. The Panel finds that the repairs to the Ministry of Planning buildings, the Ministry of Justice buildings, the Ministry of Communications facilities, the Social Affairs institute, orphanage and centre for the handicapped and the fire and police stations, together with the construction of the temporary offices at Bayan Palace, were undertaken pursuant to procurement procedures that were reasonable in the prevailing circumstances of urgency. However, the remaining repairs could have been postponed while competitive procurement procedures were used. The Panel has, therefore, applied a deduction for the relevant excess costs. Further adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

163. In light of the above, the Panel recommends compensation in the amount of US$37,236,000 out of the US$56,126,287 claimed for repairs to other Government of Kuwait facilities.

(i) Airlift of fire-fighting equipment for oil well fires - US$19,389,711

164. The Corps charged the Government of Kuwait the cost of transporting fire-fighting equipment to Kuwait to assist in fighting the oil well fires. The equipment was transported by air by the U.S. Army's Military Air Command in the weeks following liberation.

165. The Panel finds, in common with other panels, that the reasonable cost of transporting the fire-fighting equipment to Kuwait is compensable. 39/

166. The Panel finds that the procurement procedures used by the Corps were reasonable in the circumstances but that an adjustment should be made for insufficient evidence.

167. In light of the above, the Panel recommends compensation in the amount of US$17,936,000 out of the US$19,389,711 claimed for the airlift of fire-fighting equipment.

(j) U.S. Army Corps of Engineers labour costs for damage surveys and supervision of repairs and cost of office support and logistics - US$44,435,393

168. The Corps charged the Government of Kuwait on a cost basis for its labour and other costs in managing the KERO programme. As set out in paragraph 136 above, the Panel finds that the selection of the Corps as project manager was reasonable. Further, the Panel finds that the costs incurred by the Corps were reasonable and would not have been reduced if the competitive procurement procedures set out above had been adopted.

However, the Panel finds that an adjustment should be made for insufficient evidence.

169. Accordingly, the Panel recommends compensation in the amount of US$41,103,000 out of the US$44,435,393 claimed for labour, office and logistics costs.

2. Other tangible property - US$7,562,423

170. KERO replaced furniture and fixtures lost from the National Assembly building. As set out above in paragraph 158 above, the Panel has applied a notional US$1,464,000 increase to this loss type to reflect certain reclassifications in the claim as presented.

171. The Panel has not found it necessary to decide whether competitive procurement procedures could have been adopted in relation to the purchase of the replacement furniture and fixtures. This is because the Panel finds that, for some of the purchases, the adoption of competitive tendering procedures would not have reduced costs and, for the remaining purchases, the use of competitive tendering procedures would not have been possible because the items could only be obtained from specific suppliers.

172. The Panel finds that an adjustment should be made for insufficient evidence.

173. In light of the above, the Panel recommends compensation in the amount of US$7,898,000 compared with the US$7,562,423 claimed for other tangible property losses. This recommendation includes the addition to the amount claimed to take account of the reclassifications set out in paragraphs 158 and 170 above.

D. Amiri Diwan

Government Claim No. 7, UNCC Claim No. 5000043

Table 4. Summary Table for Amiri Diwan

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property			
a) Rare books and documents	842,368	460,000	174-177
b) Office equipment and furniture	1,564,674	757,000	178-181
c) Prospective gifts	3,663,965	2,565,000	182-184
d) Vehicles	1,320,283	940,000	185-187
Total	7,391,290	4,722,000	
Interest	1,175,080		

1. Other tangible property - US$7,391,290

(a) Rare books and documents - US$842,368

174. The Amiri Diwan comprises the governing offices of Kuwait's Head of State, the Amir. The Amiri Diwan seeks compensation for rare books and documents destroyed in its Historic Documents Centre. The loss is valued using a combination of approaches, including computations based on historic and replacement costs.

175. The Panel finds that adjustments should be made for an inadequate procurement process, method of valuation, overstatement (including significant overstatement in the claimed cost of photocopying documents), and insufficient evidence.

176. In light of the above, the Panel recommends compensation in the amount of US$460,000 out of the US$842,368 claimed for rare books and documents.

177. The Amiri Diwan also seeks an order that Iraq return certain priceless items such as moon rocks and specially bound Korans missing after liberation. While recognising the importance of such items to the Government of Kuwait, the Panel finds that it does not have the power to make such an order.

(b) Office equipment and furniture - US$1,564,674

178. The Amiri Diwan seeks compensation for office equipment and furniture, such as computers, telecommunications equipment, photocopiers, desks, safes and carpeting, taken or destroyed as a result of the burning and looting of the Amiri Diwan's offices in Bayan Palace.

179. Except for the telecommunications equipment, the amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by the Amiri Diwan. The Panel finds that adjustments should be made for inadequate accounting for depreciation, an inadequate procurement process, enhancement, inadequate accounting for residual value, saved expenses, and insufficient evidence.

180. As to the telecommunications equipment, the Panel finds that the Amiri Diwan overstated the deduction required for depreciation. The Panel has re-calculated the depreciation using a residual value of 15 per cent and has made a notional addition to the amount claimed. On the other hand, adjustments should be made for an inadequate procurement process, enhancement, and for insufficient evidence.

181. In light of the above, the Panel recommends compensation in the amount of US$757,000 out of the US$1,564,674 claimed for office equipment and furniture.

(c) Prospective gifts - US$3,663,965

182. The Amiri Diwan also seeks compensation for the loss of a number of items intended as gifts for presentation to visitors, as well as a number of medallions and sashes intended for presentation as awards by the Government of Kuwait. The loss is valued on the basis of the historic cost of the items.

183. As part of the verification and valuation programmes applicable to this loss element, the Panel considers, inter alia, whether there has been adequate accounting for depreciation, whether there has been any enhancement and whether adequate procurement procedures have been applied. In this case, a number of the lost items were designed and manufactured by one supplier exclusively for the Amiri Diwan and this supplier holds the copyright for the designs. Accordingly, the Panel finds that no adjustments in respect of depreciation, enhancement or procurement procedures for the supply of replacements are appropriate. The Panel

finds, however, that an adjustment should be made for insufficient evidence.

184. Accordingly, the Panel recommends compensation in the amount of US$2,565,000 out of the US$3,663,965 claimed for prospective gifts.

(d) Vehicles - US$1,320,283

185. The Amiri Diwan seeks compensation for the loss of a number of vehicles, including 10 armoured vehicles.

186. Some adjustments need to be made to reflect the fact that one of the lost vehicles has been claimed for twice, for the enhancement of the armoured vehicles, for an inadequate procurement process (for the replacement of the armoured vehicles), saved expenses (on operating and maintenance), and for insufficient evidence.

187. The Panel therefore recommends compensation in the amount of US$940,000 out of the US$1,320,283 claimed for vehicles.

E. Ministry of Finance

Government Claim No. 14, UNCC Claim No. 5000112

Table 5. Summary Table for Ministry of Finance

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Support payments to Kuwaitis outside Kuwait	792,176,098	707,800,000	193-202
Increased operating expenses of Kuwaiti embassies	144,394,897	18,200,000	203-211
Total	936,570,995	726,000,000	
Interest	148,824,520		

1. Introduction

188. The Ministry of Finance was responsible for the administration of payments of relief made to Kuwaitis who left Kuwait after Iraq's invasion and occupation of Kuwait. The Ministry claims sums said to have been paid to approximately 400,000 Kuwaitis for living, housing and other expenses in 41 countries around the world from August 1990 until May 1991.

189. The Council of Ministers of the Government of Kuwait issued two basic decrees governing such payments: one for Kuwaitis in the GCC states and the other for Kuwaitis in other countries. The decrees set out the amounts of support to be paid after investigations by representatives of the Council of Ministers. It is asserted that the allowances 40/ were distributed by Kuwaiti embassies in the relevant countries. Other expenses, such as medical and educational fees, were distributed as need arose. Certain payments distributed during the payment period in respect of medical treatment and education outside Kuwait are not claimed as the Ministry accepts that they would have been incurred even without Iraq's invasion and occupation of Kuwait.

190. The Panel finds that the amounts paid by the Government of Kuwait to those of its citizens who left Kuwait and had no means of support are compensable under paragraphs 34(b) and 36 of decision 7 subject to verification and valuation. As set out above, the latter paragraph provides that governments can recover for payments made or relief provided by them for losses covered by any of the criteria adopted by the Governing Council including, as in this case, losses due to an inability to return to Kuwait. The Panel finds that the compensable period for payments under the programme is from 2 August 1990 until 31 May 1991. The compensable period includes the three months following liberation because, until the critical work needed to restore hospitals, public water supplies, electricity and other essential services in Kuwait was completed, it was not safe for the

population of Kuwait to return in large numbers. Accordingly, the Panel finds that it was reasonable for the support payments to have continued until 31 May 1991.

191. One item of the claim relates to the purchase of gas masks for Kuwaitis living in Saudi Arabia. As the Panel adopts the "E2" panel's finding that Iraq made serious and credible threats of military action against the territory of Saudi Arabia, 41/ the Panel finds that such expenses are compensable under paragraph 34(a) of decision 7.

192. The claim, as presented in the Form F, is for US$936,570,995, before interest, comprising two loss types: "payment or relief to others" for which US$792,176,098 is claimed, and "public service expenditures" of US$144,394,897. The Government of Kuwait has provided information to the Panel which indicated that the amount spent under the loss type of "public service expenditures" was, in fact, US$57,700,000 and the amount under the loss type of "payment or relief to others" may have been in excess of the amount claimed in the Form F. The Government also stated that, despite its revisions to the amounts spent, it did not intend to make an overall change to the amounts claimed. The Panel is, therefore, limited in its examination of the support payments to the sum actually claimed. In view of the information provided, the Panel noted, and took into account in its verification and valuation of the claim:

(a) that the amount claimed under the loss type of "payment or relief to others" may have been understated; and

(b) the revision to the amount claimed under the loss type of "public service expenditures".

2. Payment or relief to others - US$792,176,098

(a) Support payments to Kuwaitis outside Kuwait - US$792,176,098

193. The Panel now turns to the quantum of compensation to be recommended under the loss type of "payment or relief to others". Given the number of beneficiaries of the support payments, the geographical spread of the Kuwaitis outside Kuwait and the process by which payments were disbursed, a very large volume of documentation was available in relation to the claim, although only a limited sample was submitted as evidence.

194. The Panel sought and received additional information as to, among other things, the controls used to ensure the proper distribution of relief payments, the relevance of budgeted figures of which use had been made and the basis for the calculation of the claim, including some evidence of the

trail connecting the figures claimed with the actual payment of relief to individuals.

195. However, it emerged from this additional information that there were no documents which had been arranged for review and collated so as to support the figures appearing in relation to the six embassies which generated the largest claims. The Panel therefore addressed to the Ministry a note verbale dated 31 March 1999 seeking an explanation as to the basis for the preparation of the claim and of the lack of a documentary trail. The Government's response set out the difficulties experienced in preparing the claim, explained the limited nature of the evidence relied upon, and disclosed that it was unable to substantiate the amounts drawn from the supporting documents when the claim was originally prepared.

196. This led to a mission by the secretariat and the expert consultants to Kuwait from 4 to 5 May 1999 during which several dozen boxes of materials were inspected and discussions were held with representatives of the Government of Kuwait and its consultants. Although several hundred files of documents were collected, the mission revealed that there was no material to bridge the gap between the documents on which the claim was based and the actual use of the funds claimed.

197. Ultimately, reliance is placed by the Government of Kuwait on:

(a) Kuwait Investment Office ("KIO") transfer memoranda which record instructions for the transfer of funds from the KIO in London to the individual embassies which distributed the support payments; and

(b) monthly statements from embassies as to expenditures incurred or budgeted.

198. Due to the size of the claim and the number of embassies involved, the Panel selected for closer scrutiny only those embassies which among them ensured coverage of over 90 per cent of the support payments claimed.

199. While it is clear that KIO sent large sums to Kuwaiti embassies world-wide and a large proportion of this was disbursed in the payment of relief to Kuwaiti evacuees, the absence of a comprehensive documentary trail calls for some adjustments to the claimed amount. These adjustments are of two types.

200. First, specific adjustment is required because of the use of inappropriate exchange rates. In setting out the cost of the support payment programme for Egypt, the Government of Kuwait used a standard rate of two Egyptian pounds ("LE") to the US dollar for the months of August 1990 to January 1991, and a market based rate thereafter. The use of the standard rate inflates this part of the claim by US$16,500,000 as the

market rate for the Egyptian pound against the US dollar moved from LE 2.69 to LE 2.92 during the relevant period. The Panel has therefore applied a reduction of US$16,500,000 so as to correct the overstatement.

201. Second, a more general adjustment is required so as to reflect the evidentiary gaps in the claim that the Government itself acknowledges. Ordinarily, the Panel's approach would have been to reduce the claim significantly so as to reflect the limitations of the evidence provided. However, the Panel in the particular circumstances of this claim finds that a significant adjustment of this kind cannot be justified, notwithstanding that the trail of evidence is not complete. This is so because of the nature of the relief effort which was mounted without pre-existing support services for such operations, and the mass of evidence available to show that substantial amounts were in fact expended on the relief programme that may have exceeded the amounts claimed. Nonetheless, the Panel has made an adjustment for insufficient evidence.

202. In light of the above, the Panel recommends compensation in the amount of US$707,800,000 out of the US$792,176,098 claimed.

3. Public service expenditures - US$144,394,897

(a) Increased operating expenses of Kuwaiti embassies - US$144,394,897

203. The Government of Kuwait claims the increase in the operating expenses of its various embassies said to be attributable to the administration of the support payment programme and hence to Iraq's invasion and occupation of Kuwait.

204. The Panel finds that the claim for increased embassy operating costs incurred in running such an extensive support payments programme is, in principle, compensable under paragraph 34(b) or paragraph 36 of decision 7. The Government of Kuwait performed its necessary and legitimate function of ensuring the safety and well-being of its citizens who were abroad as a result of Iraq's invasion and occupation of Kuwait and, in so doing, incurred additional expenses.

205. The Panel finds that the period in respect of which compensation is to be awarded is the same period as that for the support payments claim, noted above at paragraph 190, that is, the period from 2 August 1990 to 31 May 1991.

206. The Panel encountered difficulties in valuing this loss element as insufficient information was available on an individual embassy basis as to the additional costs incurred and as to what additional activities were

undertaken by each embassy. A large proportion of the expenditure included in the overall amount claimed was also described as "miscellaneous".

207. The Panel determines that amounts claimed in respect of additional embassy operating expenses are reasonable, other than those of the embassy in the United States of America, as set out below.

208. The Panel has proceeded by calculating the proportion of costs to relief paid by a sample of embassies and determining from that proportion an average percentage of expenses to be awarded in respect of the embassy costs. In the case of the embassy in the United States of America, it was not possible to determine the relationship between increased embassy costs and the level of support payments. The Panel therefore finds that an adjustment is necessary to remove from the amount claimed in respect of the embassy in the United States of America that part of its additional operating expenses which was not demonstrably related to the support programme.

209. A specific adjustment is also required in relation to the embassy in Egypt. Included within the figure provided for that embassy's costs is an item of US$17,900,000 which represents an estimate of transfers to other embassies and Ministries. During the mission to Kuwait, the Government of Kuwait was asked whether the transfers to other embassies may have been to fund those embassies' support payments and operating expenses so that the item could represent a duplication. The Government accepted that this might be the case. In view of the absence of any documentary support for the use of the funds in question, the Panel considers it appropriate to deduct the sum of US$17,900,000 from the amount claimed.

210. Additionally, the Panel finds that an adjustment should be made for insufficient evidence and that the special considerations noted at paragraph 201 above are not relevant to this loss element.

211. In light of the above, the Panel recommends compensation in the amount of US$18,200,000 out of the revised claim amount of US$57,700,000. 42/

F. Ministry of Interior

Government Claim No. 20, UNCC Claim No. 5000137

Table 6. Summary Table for Ministry of Interior

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	18,288,377	6,692,000	212-214
Relief paid to employees	274,343,423	96,431,000	215-219
Total	292,631,800	103,123,000	
Interest	46,505,560		

1. Other tangible property - US$18,288,377

(a) Vehicles - US$18,288,377

212. The Ministry of Interior (the "Ministry") provides all police and law enforcement protection for the Government of Kuwait and for those purposes before the invasion had a number of vehicles, including police cars, ambulances, tow trucks and armoured vehicles. The Ministry is also responsible for the training of law enforcement personnel in the Police Academy.

213. The Panel examined a list of the vehicles owned by the Ministry as at 4 January 1990. The Panel found that a number of vehicles set out in the statement of claim did not appear on that list and that some vehicles were incorrectly classified. Adjustments were made for overstatement, for inadequate accounting for depreciation, and for substantial saved expenses in respect of running and maintenance costs.

214. In light of the above, the Panel recommends compensation in the amount of US$6,692,000 out of the US$18,288,377 claimed for vehicles.

2. Payment or relief to others - US$274,343,423

(a) Relief paid to employees - US$274,343,423

215. The Ministry of Interior seeks compensation in the amount of US$274,343,423 for relief paid to employees.

216. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

217. The Panel, as set out above at paragraph 36, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out above at paragraph 48, and the deduction of the employees' social security contribution.

218. The Panel finds that an adjustment should also be made for insufficient evidence.

219. In light of the above, the Panel recommends compensation in the amount of US$96,431,000 out of the US$274,343,423 claimed.

G. Kuwait Fund for Arab Economic Development

Government Claim No. 21, UNCC Claim No. 5000138

Table 7. Summary Table for Kuwait Fund for Arab Economic Development

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Business transaction or course of dealing			
a) Loss of investment income	3,176,726	0	220-225
b) Expenses of operating in London	2,007,509	1,633,000	226-231
Sub-total	5,184,235	1,633,000	
Real property	235,829	87,000	232-233
Other tangible property	450,437	71,000	232-233
Payment or relief to others			
a) Relief paid to employees	2,534,228	842,000	234-238
b) Relocation expenses	77,095	61,000	239-244
c) Temporary housing	42,101	17,000	239-244
Sub-total	2,653,424	920,000	
Pre-paid rent	739,926	739,926	245-247
Total	9,263,851	3,450,926	
Interest	1,472,040		

1. Business transaction or course of dealing - US$5,184,235

(a) Loss of investment income - US$3,176,726

220. The Kuwait Fund for Arab Economic Development (the "Fund") is an agency of the Government of Kuwait created to provide financial and technical assistance programmes to developing countries ("borrowers"). Prior to Iraq's invasion of Kuwait it operated from offices in Kuwait City. In September 1990, the Fund moved its operations to temporary offices in London.

221. The Fund derives income from two sources:

(a) income from the investment of its surplus funds; and

(b) deposit interest earned on repaid loans (principal and interest) ("deposit interest income").

222. During the period of occupation, notwithstanding the continuance of the operations of the Fund in London, most borrowers withheld repayments because, the Government of Kuwait asserts, they were uncertain about the

fate of Kuwait and were unsure whether the payments forwarded to Kuwait would be credited and properly processed.

223. The Fund seeks compensation for loss of deposit interest income calculated by:

(a) multiplying the unpaid principal amount by the number of days between 2 August 1990 and 26 February 1991 (or the actual date of payment if earlier) that the loan was delinquent; and

(b) applying thereto an interest rate of 7.5 per cent per annum which, the Fund asserts, is a conservative estimate of the interest that could have been earned.

224. The Panel is satisfied that Iraq's invasion and occupation of Kuwait may have caused some uncertainty to borrowers. The Fund has stated that after it resumed operations in London, new deposit facilities were established, and borrowers were contacted and updated on the status of the Fund. The Panel finds therefore that the uncertainty of the borrowers was, or should have been, dispelled. No evidence has been provided that borrowers in default were sent repeated, or any, specific demands for repayment or that there was any impediment to steps being taken to collect the loans. Accordingly, the Panel is not satisfied that the invasion made it impossible for the borrowers to repay the loans nor that it was the direct cause of the loss of the Fund's deposit interest income.

225. Accordingly, the Panel does not recommend any compensation for this loss element.

(b) Expenses of operating in London - US$2,007,509

226. The Fund asserts that it incurred a variety of expenses on account of its relocation in London from September 1990 until May 1991. The Fund selected London for its operations because the Government of the United Kingdom made special arrangements to lift the freeze on some of the Fund's assets and business premises were readily available there. The Fund seeks compensation for the full cost of operating in London during the period, including additional office expenses (being office rent, consultancy expenses, fees paid for monitoring of the Fund's asset portfolio, the cost of installation of telephone lines and rent paid for office furniture and computers) and employee-related expenses (such as additional salaries, rent allowances paid and cars provided to employees while in London).

227. The Panel finds, as set out above at paragraph 79, that the full cost of temporarily conducting operations outside Kuwait is compensable, subject to deductions for expenses that would ordinarily have been incurred by the

Fund in its operations in Kuwait and which have been saved. The Panel also finds it reasonable that the Fund selected London as the place of relocation and stayed there for the period that it did.

228. The Panel recommends that this claim for additional office expenses (as described above) be paid in full.

229. As to the claim for additional employee-related expenses, the Panel issued an interrogatory seeking information as to the basis of calculation of additional salaries and rent allowances paid to the Fund's employees while in London. The Fund responded that the increased amounts had been paid in respect of additional cost of living and rental allowances.

230. The evidence presented and the response to the interrogatory has revealed double counting in respect of one employee's salary for one month, and that inappropriate dates for the calculation of the rates of exchange as between US$, KD, and pounds sterling were used. Following an analysis of the relative costs of living in Kuwait and in London, based upon the United Nations' system of expatriate and overseas allowances, some adjustment has been made to the claim for additional salaries. The Panel also finds that the claim for car costs should be adjusted so as to reflect expenses that the Fund would ordinarily have incurred in Kuwait.

231. The Panel accordingly recommends compensation in the amount of US$1,633,000 out of the US$2,007,509 claimed for the expenses of operating in London.

2. Property losses

(a) Real property (office premises) - US$235,829

(b) Other tangible property - US$450,437

Office furniture US$103,798

Cars US$29,641

Interior furnishings of villas US$316,998

232. The Fund also seeks compensation for property losses. The amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by the Fund. The Panel finds that adjustments should be made for inadequate accounting for depreciation, an inadequate procurement process, enhancement, overstatement, saved expenses, and insufficient evidence.

233. The Panel therefore recommends compensation in the amount of US$87,000 out of the US$235,829 claimed for real property and US$71,000 out of the US$450,437 claimed for other tangible property.

3. Payment or relief to others - US$2,653,424

(a) Relief paid to employees - US$2,534,228

234. The Fund seeks compensation in the amount of US$2,534,228 for relief paid to employees.

235. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

236. The Panel accepts, as set out at paragraph 36 above, the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution.

237. The Panel is satisfied that there is no duplication of claim as between employees who had been working in London and those employees who remained in Kuwait. However, the Panel finds that an adjustment should be made for insufficient evidence.

238. In light of the above, the Panel recommends compensation in the amount of US$842,000 out of the US$2,534,228 claimed.

(b) Relocation expenses - US$77,095 and temporary housing - US$42,101

239. The Fund seeks compensation for travel expenses for key Fund employees who were evacuated to London to staff the Fund's temporary office and who were, after liberation, repatriated to Kuwait.

240. Prior to Iraq's invasion and occupation of Kuwait, the Fund provided accommodation in Kuwait to some of its employees in villas rented by the Fund. These villas remained uninhabitable for several months after June 1991, when the employees began returning to Kuwait, and the provision of alternative accommodation was necessary. The Fund seeks compensation for the cost of providing alternative housing, usually in hotels, for such employees for various periods.

241. The Panel finds, as set out above at paragraphs 76 and 81, that these two loss elements are compensable.

242. As to the claim for the cost of alternative housing, the Panel finds, further to the considerations examined above at paragraph 77, that a reasonable period for the award of compensation is two months after the emergency period, having regard to the limited nature of the repairs required to be done to the villas. On the basis of the documents provided, including invoices from hotels, the Panel has made adjustments to account for the fact that some of the costs were incurred after July 1991, that is, after the end of the relevant period for compensation.

243. The amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by the Fund. The Panel finds adjustments should be made for overstatement and insufficient evidence.

244. In light of the above, the Panel recommends compensation in the amount of US$61,000 out of US$77,095 claimed for relocation expenses and US$17,000 out of the US$42,101 claimed for temporary housing.

4. Other losses - US$739,926

(a) Pre-paid rent - US$739,926

245. The Fund seeks compensation for pre-paid rent on a number of the villas which were rented for employees prior to the Iraq's invasion and occupation of Kuwait. The rent was paid in early July 1990 for the year beginning July 1990. The Fund seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 30 June 1991.

246. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that the Fund was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 30 June 1991 because the employees left Kuwait following the invasion and the villas were still uninhabitable in July 1991.

247. In light of the above, the Panel recommends payment in full in the amount of US$739,926.

H. State Audit Bureau

Government Claim No. 26, UNCC Claim No. 5000143

Table 8. Summary Table for State Audit Bureau

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	174,130	120,000	248-250
Relief paid to employees	1,807,397	551,000	251-255
Other Losses			
a) Pre-paid rent	571,857	571,857	256-258
b) Increased rent	1,912,142	812,000	259-262
c) Additional consultants' salaries	63,622	0	263-265
Sub-total	2,547,621	1,383,857	
Total	4,529,148	2,054,857	
Interest	719,200		

1. Other tangible property - US$174,130

Vehicles US$22,563
Furniture and fixtures US$102,614
Office equipment US$48,953

248. The State Audit Bureau ("SAB") was established to ensure financial control within the Government of Kuwait. It does so by reviewing and auditing the finances of the various Government entities. SAB claims the market value of three motor vehicles it lost together with the cost of replacing furniture, fixtures and office equipment.

249. The amounts claimed fall below the level of materiality adopted by the Panel. The Panel has therefore neither requested nor reviewed any evidence other than that submitted by SAB. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, and insufficient evidence.

250. In light of the above, the Panel recommends compensation in the amount of US$120,000 out of the US$174,130 claimed.

2. Payment or relief to others - US$1,807,397

(a) Relief paid to employees - US$1,807,397

251. SAB seeks compensation in the amount of US$1,807,397 for relief paid to employees.

252. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

253. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution (in the amount specified by SAB in its statement of claim).

254. The Panel finds that an adjustment should also be made for insufficient evidence.

255. In light of the above, the Panel recommends compensation in the amount of US$551,000 out of the US$1,807,397 claimed.

3. Other losses - US$2,547,621

(a) Pre-paid rent - US$571,857

256. SAB seeks compensation for pre-paid rent on its building. The rent was paid in July 1990 for use of the premises in the year beginning 1 July 1990 and SAB seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 30 June 1991.

257. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that SAB was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 30 June 1991.

258. In light of the above, the Panel recommends payment in full in the amount of US$571,857.

(b) Increased rent - US$1,912,142

259. SAB asserts that construction of its new office building was delayed as a result of Iraq's invasion and occupation of Kuwait and it therefore incurred rental expenses that it would not otherwise have for the period 1 February 1992 (which is shortly after the date upon which the office building was originally due to be completed) to 31 December 1994 (the date estimated in the statement of claim as the date when SAB would cease paying rent). 43/

260. The Panel finds, as set out above at paragraph 75, that the cost of such temporary premises is compensable to the extent and for a reasonable period as described above at paragraph 75, subject to a deduction for the net cost saving in renting (as opposed to owning) a building. In accordance with the considerations at paragraph 77 above, the Panel reviewed the original and subsequent building contracts, the appropriateness of the rent paid, the causes for the delay in reconstruction and the rental agreement.

261. The Panel finds that a reasonable period for the award of compensation in the context of this claim is 18 months and that an adjustment should be made for saved expenses.

262. In light of the above, the Panel recommends compensation in the amount of US$812,000 out of the US$1,912,142 claimed.

(c) Additional consultants' salaries - US$63,622

263. Prior to the invasion, two of SAB's consultant engineers spent half of their time supervising the construction of the new office building. SAB asserts that the office building was scheduled to be built over the period 30 April 1990 to 24 January 1992. Thus, immediately before the invasion, each engineer was scheduled to spend 17.8 more months supervising the project (being the number of months between 1 August 1990 and 24 January 1992). At the time of submitting the statement of claim, SAB estimated that, due to the interruption of the project, the consultant engineers would now complete their work on the project on 19 October 1994. SAB claims that one of the engineers was re-assigned to the project on 1 February 1992 and the other on 16 May 1992. It therefore claims the cost of the engineers for the estimated additional months they would be required to supervise the project.

264. For the same reasons as set out in paragraphs 259 to 261 above, the Panel finds that it was reasonable for the engineers to work on the project until 24 July 1993 (being 18 months after the original completion date of 24 January 1992). The Panel finds that the cost of the consultants for the

period from their respective reassignments to the project until 24 July 1993 is, in principle, compensable. However, the cost of the engineers for this period is more than offset by the savings to SAB in not paying for them for the period from 1 August 1990 until their respective reassignments. 44/

265. Accordingly, the Panel does not recommend any compensation for the additional consultants' salaries.

I. Council of Ministers

Government Claim No. 28, UNCC Claim No. 5000145

Table 9. Summary Table for Council of Ministers

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	3,034,379	2,449,000	266-271
Other tangible property	12,520,718	6,793,000	266-271
Loss of revenue	2,284,361	0	272-274
Relief paid to employees	8,851,408	3,540,000	275-278
Total	26,690,866	12,782,000	
Interest	4,241,077		

1. Property losses

(a) Real property - US$3,034,379

(b) Other tangible property - US$12,520,718

Furniture and supplies US$7,007,256

Contents of Heritage Centre US$4,553,795

Contents of Central Library US$959,667

266. The Council of Ministers (the "Council") serves as the Government of Kuwait's governing branch in conjunction with the National Assembly and the Amir. The Council is composed of all Government Ministers and is headed by the Crown Prince and Prime Minister. The Council claims that its governmental buildings appear to have been targeted by Iraq for destruction and damage. The Council seeks compensation for damage to its headquarters known as the Sulaibikhat building, the Central Tenders Committee building, the National Council of Culture, Arts and Letters (composed of the Heritage Center and the Central Library), the Stores Department, and other buildings. The Council also claims for the loss of tangible property including furniture, office equipment, supplies, artwork, books, periodicals, and manuscripts on microfilm.

267. The Council states that damage to the Sulaibikhat building may have occurred during the fighting between Iraq and the Allied Coalition Forces. Paragraph 34(a) of decision 7 provides that compensation is available for any loss suffered as a result of "[m]ilitary operations ... by either side during the period 2 August 1990 to 2 March 1991". The Panel finds, following the decision of the panel in the WBC Claim, 45/ that such damage

is compensable. Iraq is liable for any direct loss, whether caused by its own or the Allied Coalition Forces between 2 August 1990 and ? March 1991.

268. Under other tangible property loss, the Council seeks, among other things, the cost of hiring four researchers for a period of three years to review reels of microfilm. The work had not been started at the time the Council filed supplemental submissions in May 1998. The Panel finds that the anticipated cost of hiring researchers in this way to review microfilm for damage is not a direct loss.

269. The Panel has considered the basis upon which the Council valued its tangible property losses and the process by which repairs to real property were effected. The Panel has requested and received a number of documents in addition to the evidence submitted with the claim.

270. The Panel finds that adjustments should be made for an inadequate procurement process, inadequate accounting for depreciation, enhancement, saved expenses, and insufficient evidence.

271. In light of the above, the Panel recommends compensation in the amount of US$2,449,000 out of the US$3,034,379 claimed for real property loss and US$6,793,000 out of the US$12,520,718 claimed for other tangible property loss.

2. Business transaction or course of dealing - US$2,284,361

(a) Loss of revenue - US$2,284,361

272. Prior to the invasion, the Central Tenders Committee ("CTC"), a division of the Council, earned revenue from the collection of fees in relation to tenders for Government of Kuwait contracts. The Council claims that CTC was unable to operate during the occupation and emergency periods and seeks compensation for loss of revenue for the 1991 and 1992 fiscal years.

273. The Panel finds, as set out at paragraphs 51 to 58 above, that the loss of revenue is compensable for the period described in paragraph 52 above, subject to deductions for exceptional post-liberation revenue, for fees that would have been paid by other Government of Kuwait departments and for saved expenses. The Panel sought information as to the revenue earned by the Council in fiscal years 1986-1995. From analysis of the Council's financial statements, it appears there was a very substantial increase in CTC revenue over the three years ended 30 June 1995. The Panel finds, after taking into account this exceptional post-liberation revenue, that the overall loss of revenue was small. Taking into consideration the

fact that no account was taken of savings in outgoings, including identifiable direct costs of collecting CTC fees, the Panel finds there is no net revenue loss.

274. In light of the above, the Panel does not recommend any compensation for the claim for lost CTC revenue.

3. Payment or relief to others - US$8,851,408

(a) Relief paid to employees - US$8,851,408

275. The Council seeks compensation in the amount of US$8,851,408 for relief paid to employees.

276. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

277. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

278. In light of the above, the Panel recommends compensation in the amount of US$3,540,000 out of the US$8,851,408 claimed.

J. Department of Legal Advice and Legislation

Government Claim No. 29, UNCC Claim No. 5000146

Table 10. Summary Table for Department of Legal Advice and Legislation

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	225,903	136,000	279-281
Relief paid to employees	1,950,063	780,000	282-285
Pre-paid rent	237,117	237,117	286-288
Total	2,413,083	1,153,117	
Interest	383,960		

1. Other tangible property - US$225,903

Furniture, fixtures, office equipment and supplies US$180,303
Motor vehicles US$16,584
Office appliances US$1,705
Law library book collection US$27,311

279. The Department of Legal Advice and Legislation ("DLAL") acts as the Government of Kuwait's legal counsel. DLAL seeks compensation for tangible property losses, being the items set out above.

280. The amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by DLAL. The Panel finds that adjustments should be made for inadequate accounting for depreciation, overstatement, saved expenses, and insufficient evidence.

281. In light of the above, the Panel recommends compensation in the amount of US$136,000 out of the US$225,903 claimed.

2. Payment or relief to others - US$1,950,063

(a) Relief paid to employees - US$1,950,063

282. DLAL seeks compensation in the amount of US$1,950,063 for relief paid to employees.

283. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based

upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

284. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

285. In light of the above, the Panel recommends compensation in the amount of US$780,000 out of the US$1,950,063 claimed.

3. Other losses - US$237,117

(a) Pre-paid rent - US$237,117

286. DLAL seeks compensation for pre-paid rent on its headquarters on the basis of a pre-invasion payment instruction. Although DLAL signed a payment request to the Ministry of Finance on 20 July 1990 for use of the premises in the six months beginning 1 July 1990, the rent was not paid until October 1991. The Panel is satisfied that, so far as DLAL is concerned, the payment instruction was effective as of 20 July 1990 and therefore that the rent should be treated as being paid prior to Iraq's invasion and occupation of Kuwait (that is, as pre-paid rent) for present purposes. DLAL seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990.

287. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that DLAL was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990.

288. In light of the above, the Panel recommends payment in full in the amount of US$237,117.

K. Civil Service Commission

Government claim No. 33, UNCC Claim No. 5000161

Table 11. Summary Table for Civil Service Commission

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Payment or relief to others			
a) Relief paid to employees	3,742,181	1,422,000	289-292
b) Repatriation expenses	5,270	5,270	293-295
Sub-total	3,747,451	1,427,270	
Other tangible property	537,055	337,000	296-299
Total	4,284,506	1,764,270	
Interest	680,920		

1. Payment or relief to others - US$3,747,451

(a) Relief paid to employees - US$3,742,181

289. The Civil Service Commission ("CSC") is responsible for the supervision of personnel and employee related matters for all the Ministries and organizations of the Government of Kuwait. CSC did not operate during the occupation and emergency period and its offices are said to have been used as a military field hospital. CSC seeks compensation in the amount of US$3,742,181 for relief paid to employees.

290. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

291. The Panel, as set out at paragraph 36 above, accepts tne compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution.

292. In light of the above, the Panel recommends compensation in the amount of US$1,422,000 out of the US$3,742,181 claimed.

(b) Repatriation expenses - US$5,270

293. CSC claims the costs of transporting 16 employees from Egypt to Kuwait after liberation. These 16 employees had previously been employed by CSC in Kuwait and went to Egypt after the invasion. The Panel finds, as set out above at paragraph 81, that such costs are compensable.

294. This item of claim fell below the materiality level adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by CSC. The Panel finds that adjustments should be made for insufficient evidence but, due to the impact of rounding (considered above at paragraph 127), no adjustment is necessary.

295. In light of the above, the Panel recommends compensation in the full amount of the US$5,270 claimed.

2. Other tangible property - US$537,055

Temporary furniture US$480,562
Vehicles US$56,493

296. CSC claims for the loss of, or damage to, most of its furniture, office equipment and vehicles. After the invasion, CSC repaired a few remaining pieces of the furniture and purchased low quality furniture as an interim stopgap measure to replace taken furniture, so as to resume regular operations as soon as possible. When it moved to new premises in early 1994, CSC purchased new furniture and left behind 90 per cent of the low quality furniture, for which it asserts it could not have received any salvage value.

297. The Panel finds that the cost of temporary furniture claimed by CSC is compensable for reasons similar to those considered above at paragraph 73 in relation to temporary repairs. Here, it was reasonable for CSC to purchase the low quality furniture immediately after liberation for interim use.

298. However, adjustments should be made for inadequate accounting for depreciation and residual value, saved expenses, and insufficient evidence.

299. In light of the above, the Panel recommends compensation in the amount of US$337,000 out of the US$537,055 claimed.

L. Ministry of Higher Education

Government Claim No. 39, UNCC Claim No. 5000167

Table 12. Summary Table for Ministry of Higher Education

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	503,600	296,000	300-303
Other tangible property	660,275	440,000	304-305
Relief paid to employees	1,019,465	408,000	306-309
Pre-paid rent	332,518	332,518	310-312
Total	2,515,858	1,476,518	
Interest	400,200		

1. Property losses

(a) Real property - US$503,600

300. The Ministry of Higher Education ("MHE") is responsible for the formation and implementation of higher education policy in Kuwait. The real property losses of MHE include the cost of repairing and cleaning its damaged headquarters, Music Institute and theatre.

301. MHE leased its headquarters. The Panel finds, as set out above at paragraph 68, that where leased premises were damaged as a result of Iraq's invasion and occupation of Kuwait the tenant can claim the cost of repairs undertaken by it, provided that the landlord has not been awarded compensation by the Commission for the same loss.

302. The Panel finds that adjustments should be made for inadequate accounting for depreciation, overstatement and insufficient evidence.

303. In light of the above, the Panel recommends compensation in the amount of US$296,000 out of the US$503,600 claimed.

(b) Other tangible property - US$660,275

304. MHE seeks compensation for the loss of furniture and equipment from its headquarters. The Panel finds that adjustments should be made for inadequate accounting for depreciation and insufficient evidence.

305. In light of the above, the Panel recommends compensation in the amount of US$440,000 out of the US$660,275 claimed.

2. Payment or relief to others - US$1,019,465

(a) Relief paid to employees - US$1,019,465

306. MHE seeks compensation in the amount of US$1,019,465 for relief paid to employees.

307. The response of the Government to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

308. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

309. In light of the above, the Panel recommends compensation in the amount of US$408,000 out of the US$1,019,465 claimed.

3. Other losses - US$332,518

(a) Pre-paid rent - US$332,518

310. MHE seeks compensation for pre-paid rent on its headquarters. The rent was paid in July 1990 for use of the premises in the six months beginning 1 July 1990 and MHE seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990.

311. As considered at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that MHE was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990.

312. In light of the above, the Panel recommends payment in full in the amount of US$332,518.

M. Ministry of Commerce and Industry

Government Claim No. 40, UNCC Claim No. 5000168

Table 13. Summary Table for Ministry of Commerce and Industry

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	50,480	14,000	313-315
Other tangible property	2,505,803	1,344,000	316-318
Relief paid to employees	14,763,320	5,905,000	319-322
Loss of revenue	3,617,471	2,824,000	323-325
Total	20,937,074	10,087,000	
Interest	3,326,880		

1. Property losses

(a) Real property - US$50,480

313. The Ministry of Commerce and Industry ("MCI") is responsible for the regulation of Kuwait's businesses, stores and markets. Its area of responsibility extends to quality control testing on commodities and products sold in Kuwait.

314. The real property losses of MCI include the cost of repairing damage to its Quality Control Testing Centre and branch offices. The amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by MCI. The Panel finds that adjustments should be made for an inadequate procurement process, inadequate accounting for depreciation, saved expenses, and insufficient evidence.

315. In light of the above, the Panel recommends compensation in the amount of US$14,000 out of the US$50,480 claimed.

(b) Other tangible property - US$2,505,803

Quality control testing equipment US$1,932,911

Office furniture, equipment and supplies US$522,085

Motor vehicles US$50,807

316. MCI seeks compensation for the above tangible property losses.

317. The Panel finds that adjustments should be made for an inadequate procurement process, enhancement, inadequate accounting for depreciation, saved expenses (particularly in relation to the regular checking and maintenance which would otherwise have been required on the quality control testing equipment), and insufficient evidence. For those items of tangible property where the claimed amount fell below the level of materiality adopted by the Panel, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by MCI.

318. In light of the above, the Panel recommends compensation in the amount of US$1,344,000 out of the US$2,505,803 claimed.

2. Payment or relief to others - US$14,763,320

(a) Relief paid to employees - US$14,763,320

319. MCI seeks compensation in the amount of US$14,763,320 for relief paid to employees.

320. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

321. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

322. In light of the above, the Panel recommends compensation in the amount of US$5,905,000 out of the US$14,763,320 claimed.

3. Business transaction or course of dealing - US$3,617,471

(a) Loss of revenue - US$3,617,471

323. Before the invasion, MCI earned revenue from commercial registration and licence fees, sales taxes on metals, rocks and sand, taxes on outdoor advertising, and penalties imposed on businesses for failing to file commercial registrations or obtain business licences or for selling defective products. MCI's operations were suspended during the occupation and emergency periods. It claims the resultant loss of revenue for the period 1 July 1990 to 30 June 1991.

324. The Panel finds, as set out at paragraphs 51 to 58 above, that the loss of revenue is compensable for the period described in paragraph 52 above, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. The Panel sought, by Procedural Order 4, which it issued on 6 November 1998, information as to the revenue earned by the Council in fiscal years 1986-1995. The Panel finds that MCI did not incur certain expenses that it would ordinarily have incurred to generate the revenue claimed and in this regard recommends a deduction from the amount claimed.

325. In light of the above, the Panel recommends compensation in the amount of US$2,824,000 out of the US$3,617,471 claimed.

N. National Committee for Missing and Prisoner of War's Affairs

Government Claim No. 41, UNCC Claim No. 5000169

Table 14. Summary Table for National Committee for Missing and Prisoner of War's Affairs

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Payment or relief to others			
a) Family support payments (1)	58,452,768	153,462,000	326-337
b) Salary payments (2)	27,026,147	0	338-340
Sub-total	85,478,915	153,462,000	
Public service expenditures (3)	26,004,514	23,647,000	341-343
Total	111,483,429	177,109,000	
Interest	43,360,700		

(1) plus daily loss of US$22,411 from 1 May 1998
(2) plus daily loss of US$10,515 from 1 May 1998
(3) plus daily loss of US$10,317 from 1 May 1998

1. Payment or relief to others - US$85,478,915 plus daily loss of US$32,926 from 1 May 1998

(a) Family support payments - US$58,452,768 plus daily loss of US$22,411 from 1 May 1998

326. The National Committee for Missing and Prisoner of War's Affairs (the "COM Committee") was created in May 1991 to care for the affairs of the individuals still missing after the liberation of Kuwait. One of its first tasks was to investigate the circumstances surrounding the disappearance of over 2,000 people reported as missing by their families. The COM Committee asserts that it ultimately submitted to the International Committee of the Red Cross ("ICRC") a list of 625 individuals whom the COM Committee believes were taken prisoner by Iraq. Iraq denies that it is holding any prisoners.

327. In its statement of claim, the COM Committee seeks compensation for the following:

(a) the cost of support payments made and to be made to the families of the 625 individuals set out in paragraph 326 above;

(b) the cost of the salaries of those of the 625 individuals who were Government employees (the salaries continue to be paid into trust accounts); and

(c) its administrative expenses. 46/

328. In a supplemental submission of claim, the COM Committee states that twenty individuals were "accounted for intermittently" between 1 May 1994 (when the statement of claim was submitted) and 30 April 1998 (when the supplemental submission of claim was submitted). The supplemental submission of claim assumes that five of these twenty individuals were accounted for each year and removes these individuals from the claim for support and salary payments accordingly. Thus, for the period from 1 May 1998, the COM Committee seeks compensation for the support and salary payments in relation to 605, not 625, individuals. The Panel uses the term "Individuals" to refer to this fluctuating list.

329. The Panel first turns to consider the question of the number of individuals who are to be accepted by the Panel as missing. In its response to Procedural Order 1 issued in respect of this claim, Iraq states that 18 of the names on the list of 625 were, in fact, "repeated names". 47/

330. The Panel subsequently issued Procedural Order 30 in order to clarify, amongst other things, the reasons for the reduction in the number of Individuals from 625 to 605 between submission of the statement of claim and submission of the supplemental submission of claim. From the response to Procedural Order 30 and the Panel's consideration of other materials, the Panel finds that only 596 individuals are to be treated as missing as at the date of submission of the claim and 595 as of 1 February 1996. 48/ The Panel will refer to these persons as the "Missing".

331. As to the claim for the cost of support payments (made, according to the COM Committee, to compensate the families for loss of financial support from the Individuals), the Panel finds that the claim is compensable. The families of the Missing have suffered (and will continue to suffer) losses compensable under paragraph 14 of decision 1 and paragraphs 6(e) and 7 of decision 7 and the support payments are made to compensate for these losses, which renders the COM Committee's claim compensable under paragraph 36 of decision 7. 49/

332. The Panel now turns to consider the quantum of compensation to be recommended for the support payments claimed for the period 1 June 1991 to 30 April 1998 and an estimated amount for each day thereafter until the Individuals are released or otherwise accounted for. The claim is compensable in the amount of financial support that the family members

could no longer receive from the Missing as a direct result of the invasion and occupation of Kuwait.

333. In calculating the amount of such financial support, the Panel has calculated the income of the Missing, the number of persons supported and the time period over which such support would have been provided. The "C" and "D" Panels have considered the amount of compensation that should be awarded to an individual who has suffered a loss of financial support because of the death of his or her spouse, child or parent, 50/ and the Panel has adopted the approach of those panels by basing the amount of compensation on the present value of the stream of future income of the Missing. The Panel also follows the approach of the "D" panel in taking into account the fact that a portion of the income of the Missing would have been used for his or her maintenance. 51/

334. In order to calculate the amount of such financial support, the Panel has first considered the period from 1 June 1991 to 31 July 1999. 52/ On the basis of the information provided within the claim, the Panel has concluded that the average annual amount of financial support that each of the families of the Missing could no longer receive during this period is approximately US$14,000. The Panel therefore recommends compensation in the amount of US$66,999,000 for the period 1 June 1991 to 31 July 1999.

335. The Panel has then calculated the compensation to be awarded for the future: that is, the present value of the future support, bearing in mind the average level of annual support and the family relationships as set out above. This second period commences on 1 August 1999 and continues until such time as the Missing would no longer have provided support to their families or until they are released or are otherwise accounted for. In performing this calculation, the Panel has considered, amongst other things, the average age of the Missing and the demographics of the family members who would have received support. The Panel has also taken into account the fact that a number of the Missing may return to Kuwait and be able again to support their families. On the basis of the above considerations, the Panel has calculated the present value as US$86,463,000. 53/

336. On the basis of the evidence before it, the Panel is satisfied that the Government of Kuwait has in fact made support payments to the families of the Individuals equal to the amounts now claimed. The Panel is satisfied that the support payments will continue to be made until the Missing are released or are otherwise accounted for.

337. Accordingly the Panel recommends compensation in the amount of US$153,462,000. This recommendation comprises the award of compensation

for the payments already made and for the present value of the future payments to be made.

(b) Salary payments - US$27,026,147 plus daily loss of US$10,515 from 1 May 1998

338. The COM Committee is responsible for the payment into their bank accounts of the salaries of the Individuals who were Government of Kuwait employees. The COM Committee seeks compensation for the cost of such payments for the period from 1 June 1991 to 30 April 1998 and an estimated amount for each day thereafter until the Individuals are released or are otherwise accounted for.

339. This claim for salaries is compensable only to the extent that the payments come within paragraph 36 of decision 7 by being "payments ... for losses covered by any of the criteria adopted by the Council". Under paragraph 1(b) of decision 12, "claims of individuals ... who have been detained in Iraq" may be submitted within one year of the detainee's release or death (as legally determined by the detainee's Government), but not later than the time limit set out in paragraph 2 of the decision. The claims of the Missing cannot yet be filed under paragraph 1(b) of decision 12 because the Missing have not yet been released and their death has not been legally determined by the Government of Kuwait. Therefore, the Missing have not suffered a loss within the "criteria adopted by the Council".

340. The Panel therefore recommends that the Commission's review of this loss element be performed when the Missing are released or the Government of Kuwait determines that they are deceased. The Panel notes that the Missing can file claims for their losses under paragraph 2 of decision 12 even after the Panel has completed its review of the "F3" claims.

2. Public service expenditures - US$26,004,514 plus daily loss of US$10,317 from 1 May 1998

(a) Cost of investigations, social services and administration - US$26,004,514 plus daily loss of US$10,317 from 1 May 1998

341. The COM Committee seeks compensation for the costs of operating its office from 1 July 1992 to 30 April 1998 plus an estimated amount for each further day until all the Individuals are released or are otherwise accounted for. The COM Committee's costs incurred before 1 July 1992 are included in the claim of the Ministry of Justice, which paid the expenses at that time, and which claim is considered below.

342. The Panel finds that the reasonable cost of administering the support payments to the families of the Missing is compensable. The Panel finds that the value of such costs incurred from 1 July 1992 until the end of the COM Committee's work is 16 per cent of the amount to be awarded for the family support payments.

343. Accordingly, the Panel recommends compensation in the amount of US$23,647,000. This recommendation comprises the award of compensation for the costs already incurred and the present value of the costs to be incurred in the future.

3. Interest - US$43,360,700

344. The Panel finds it inappropriate to adopt 26 February 1991 as the date of loss for the calculation of interest, since that date of loss precedes any part of the loss claimed. The Panel has therefore considered alternative dates and selected 31 October 1997 as the most appropriate. This was selected by considering the amounts and dates of the compensable payments and after allowing for the fact that the present value of future payments has been calculated as of 1 August 1999.

O. Kuwait News Agency

Government Claim No. 44, UNCC Claim No. 5000172

Table 15. Summary Table for Kuwait News Agency

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Business transaction or course of dealing			
a) Loss of revenue	1,213,539	0	345-348
b) Hiring and training costs	1,720,072	329,000	349-363
c) Temporary premises	2,008,276	349,000	364-367
Sub-total	4,941,887	678,000	
Other tangible property			
a) Furniture, office equipment and vehicles	720,816	318,000	368-370
b) Archives	13,445,585	3,643,000	371-375
c) Library and reference materials	28,678	15,000	376-378
Sub-total	14,195,079	3,976,000	
Relief paid to employees	3,022,491	1,209,000	379-382
Public service expenditures			
a) Free news service	128,942	106,000	383-386
b) Foreign office expenses	1,734,342	451,000	387-389
Sub-total	1,863,284	557,000	
Other losses			
a) Pre-paid rent on headquarters and employee housing	495,457	495,457	390-392
b) Pre-paid life insurance and consulting fees	23,495	0	393-395
Sub-total	518,952	495,457	
Total	24,541,693	6,915,457	
Interest	3,899,920		

1. Business transaction or course of dealing - US$4,941,887

(a) Loss of revenue - US$1,213,539

345. Before Iraq's invasion and occupation of Kuwait, the Kuwait News Agency ("KUNA") operated as a news agency, selling stories and photographs to private companies and to the Kuwaiti Ministry of Information. KUNA asserts that Iraq's invasion and occupation of Kuwait disrupted its operations together with those of its customers, causing a loss of revenue from 1 August 1990 to 30 June 1993.

346. The Panel accepts these assertions and is satisfied that the disruption to the operations of KUNA and its customers, which prevented the sale of news and photographs by KUNA, was a direct result of Iraq's invasion and occupation of Kuwait. Applying the principles set out at paragraphs 51 to 58 above, the Panel finds that the loss of revenue is compensable for the period claimed, subject to deductions for exceptional post-liberation revenue, for revenue that would have been derived from other Government of Kuwait departments and for saved expenses.

347. The Panel sought information as to the revenue earned by KUNA in fiscal years 1986-1995. The Panel finds, from figures provided for the period 1 July 1993 to 30 June 1998, that 67 per cent of KUNA's revenue was provided by another of the Government of Kuwait's departments, the Ministry of Information. This Ministry has two claims of its own before the Commission. Neither of these claims gives credit for a corresponding reduction in expenses. Accordingly, as set out in paragraph 57 above, the Panel has deducted that portion of KUNA's revenue which would have been derived from the Ministry of Information. The Panel also finds that an adjustment should be made for saved expenses.

348. In light of the above, the Panel does not recommend any compensation for loss of revenue.

(b) Hiring and training costs - US$1,720,072

Hiring costs US$409,653

Training programmes US$511,402

Staff salaries during training US$331,171

Management consultant fees US$467,846

349. KUNA claims that it incurred a variety of expenses in hiring and training new employees to replace a large number of employees who left Kuwait as a result of Iraq's invasion and occupation of Kuwait and never returned.

350. KUNA originally submitted that it needed to hire 205 new employees to replace 143 pre-invasion employees who did not return after liberation. In its response to Procedural Order 16, the Government of Kuwait stated that, in fact, only 112 pre-invasion employees did not return after liberation and that 21 of the 205 "new" employees were ones who had been employed by KUNA prior to the invasion. KUNA therefore reduced its claim to cover only 184 new employees.

351. The Government has shown that the failure of the majority of the employees to return was due to Iraq's invasion and occupation of Kuwait and, therefore, the Panel finds that the reasonable costs of hiring and training new employees to replace those employees was a direct loss as a result of Iraq's invasion and occupation of Kuwait. As regards the remaining employees who did not return after liberation, 54/ the Panel does not recommend any compensation for the amounts claimed for hiring and training their replacements.

352. Of the 184 new employees, KUNA seeks compensation for hiring costs in respect of only 122. In its response to Procedural Order 16, KUNA stated that 62 of the 184 new employees were of a lower skill level and should therefore be excluded from the claim for hiring costs. KUNA estimates that, for each new employee, the cost of advertising the position, corresponding with potential recruits, interviewing and testing applicants and following-up on references was approximately 10 per cent of the new employee's first year's salary. KUNA therefore claims 10 per cent of those salaries for these 122 new employees.

353. The Panel finds that an adjustment should be made for insufficient evidence.

354. In light of the above, and of the finding in paragraph 351 above, the Panel recommends compensation in the amount of US$16,000 out of the revised amount of US$303,623 claimed. 55/

355. KUNA seeks further compensation for the cost of training programmes from [illegible] until April 1994 for those of its new employees who, it asserts, were of a lower skill level than the employees they replaced. KUNA states that these training programmes, which included courses at Reuters News Agency in London, were required to bring the new employees to the skill level of the non-returning pre-invasion employees.

356. The evidence shows that KUNA would have, in normal circumstances, incurred 38 per cent of the amount claimed for training programmes and that corresponding adjustments should be made for overstatement and for insufficient evidence.

357. In light of the above, and the finding in paragraph 351 above, the Panel recommends compensation in the amount of US$139,000 out of US$511,402 claimed.

358. KUNA also seeks compensation for the cost of salaries estimated to have been paid to its new employees while they were undergoing training. KUNA has estimated that each new employee spent approximately one month in

training. In its response to Procedural Order 16, the Government of Kuwait explained that this included the time taken to become familiar with the new job, such as learning about KUNA's organization, and attending formal training programmes. KUNA therefore claims a sum equal to the monthly average of the new employees' salaries multiplied by the number of new employees.

359. The Panel finds that the correct measure of this loss is the loss of productivity of those workers while they were undergoing training. This loss is subsumed in KUNA's loss of revenue claim. The Panel therefore cannot recommend any compensation for the cost of staff salaries incurred during training.

360. KUNA also seeks the cost of management consultants hired to undertake the work of non-returning higher level staff.

361. The Panel finds that such costs are compensable, but as to the amounts claimed, an adjustment is required for insufficient evidence.

362. In light of the above, and the finding in paragraph 351 above, the Panel recommends compensation in the amount of US$174,000 out of the US$467,846 claimed.

363. Thus the total compensation recommended for hiring and training costs is US$329,000 out of the revised amount of US$1,614,042 claimed. 56/

(c) Temporary premises - US$2,008,276

364. KUNA claims that construction of its new headquarters was delayed as a result of Iraq's invasion and occupation and that consequently it incurred rent and expenses it would not otherwise have done for the period 1 July 1991 (which is when the headquarters were originally due to be completed) to 30 June 1995 (which was the estimated date given in the statement of claim for relocation to the new headquarters). 57/

365. The Panel finds, as set out above at paragraph 75, that the cost of such temporary premises is compensable for a reasonable period, subject to a deduction for the net cost saving in renting (as opposed to owning) a building. In accordance with the discussion at paragraph 77 above, the Panel reviewed the original and subsequent building contracts, the appropriateness of the rent paid, the causes for the delay in reconstruction, and the rental agreement.

366. The Panel finds that a reasonable period, in the context of this claim, for the award of compensation is 12 months.

367. The Panel therefore recommends compensation in the amount of US$349,000 out of the US$2,008,276 claimed.

2. Other tangible property - US$14,195,079

(a) Furniture, office equipment and vehicles - US$720,816

Furniture and office equipment US$267,069

Computers and technical equipment US$344,921

Motor vehicles US$108,826

368. KUNA seeks compensation for the above tangible property losses.

369. The amounts claimed fall below the level of materiality adopted by the Panel. The Panel has therefore neither requested nor reviewed any evidence other than that submitted by KUNA. The Panel finds that adjustments should be made for overstatement, inadequate procurement process, enhancement, inadequate accounting for depreciation, saved expenses, and for insufficient evidence.

370. In light of the above, the Panel recommends compensation in the amount of US$318,000 out of the US$720,816 claimed for furniture, office equipment, and vehicles.

(b) Archives - US$13,445,585

371. KUNA seeks compensation for the loss of, and damage to, its photographic and article archives. Creation of the archives began in 1978 and they constituted an historical record of news events and personalities in the Middle East. KUNA claims the cost of the labour and materials incurred in creating the archives. This includes the salaries of 31 employees for the twelve years from 1978 until Iraq's invasion and occupation of Kuwait.

372. The claim was valued by KUNA on the basis of the depreciated historic cost of creating the archives, and not the replacement cost of its contents, because data for the latter is unavailable. The Panel accepts that this method is appropriate in the circumstances. It has established the historic cost of creating the archives and has then discounted this cost to reflect KUNA's pre-invasion use of the archives and the fact that

some of the archive material would have become redundant with time. In relation to the historic cost of the labour used to create the archives, the Panel has on investigation found that KUNA overstated both the number of hours of labour spent and its cost and has made an adjustment for this overstatement.

373. In its response to Procedural Order 1, Iraq stated that the article archive was returned to the Government of Kuwait pursuant to the United Nations Return of Property ("UNROP") programme. Attached to its response were copies of various UNROP forms detailing the items returned and observations as to their condition by the Government of Kuwait and Iraq. The Panel subsequently issued Procedural Order 37 to clarify whether the Government had taken this information into account when preparing its claim. In its response, the Government asserted that 10 per cent of the photographs (and none of the negatives) in the photographic archive were returned. It also asserted that, overall, about 10 per cent of the articles in the article archive were returned. 58/ It confirmed that the claim included the cost of creating this returned material. The Panel finds that an adjustment should be made to reflect this. It has therefore applied a 10 per cent deduction to the calculation set out in paragraph 372 above.

374. The Panel finds that a further adjustment should be made for insufficient evidence.

375. The Panel accordingly recommends compensation in the amount of US$3,643,000 out of the US$13,445,585 claimed for the archives.

(c) Library and reference materials - US$28,678

376. KUNA seeks compensation for the loss of a library of books and reference materials. The loss is calculated on the basis of the replacement cost of the lost materials.

377. The Panel finds that adjustments should be made for inadequate procurement process, inadequate accounting for depreciation, enhancement, and for insufficient evidence.

378. Accordingly, the Panel recommends compensation in the amount of US$15,000 out of the US$28,678 claimed for library and reference materials.

3. Payment or relief to others - US$3,022,491

(a) Relief paid to employees - US$3,022,491

379. KUNA seeks compensation in the amount of US$3,022,491 for relief paid to employees.

380. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

381. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

382. In light of the above, the Panel recommends compensation in the amount of US$1,209,000 out of the US$3,022,491 claimed.

4. Public service expenditures - US$1,863,284

(a) Free news service - US$128,942

383. KUNA seeks compensation for the cost of satellite equipment and teleprinters that it maintains were necessary for the broadcast to Kuwait of emergency news, such as details of mine clearance and the condition of roads, in the months after liberation.

384. In its response to Procedural Order 16, the Government of Kuwait submitted information relating to the type of news that was distributed during this period. The Panel is satisfied that the news was primarily of an emergency nature and, therefore, that reasonable costs incurred in distributing it are direct losses as a result of Iraq's invasion and occupation of Kuwait.

385. The amount claimed falls below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by KUNA. Some adjustments should be made for insufficient evidence.

386. In light of the above, the Panel recommends compensation in the amount of US$106,000 out of the US$128,942 claimed.

(b) Foreign office expenses - US$1,734,342

387. KUNA asserts that it incurred a variety of expenses because, as a result of Iraq's invasion and occupation of Kuwait, it was compelled to relocate its headquarters to its London office from shortly after the invasion until June 1991. KUNA claims all of its expenses in relation to its London office for this period. In its response to Procedural Order 16, the Government of Kuwait submitted information relating to the activities of the London office. The Panel is satisfied that the office distributed news which was primarily of an emergency nature.

388. The Panel therefore finds that the decision to operate the office in London was reasonable in the circumstances and, as considered above at paragraph 79, that the cost of temporarily conducting the operations outside Kuwait is compensable, subject to deductions for expenses that would ordinarily have been incurred by KUNA in its operations in Kuwait. Since KUNA also had an office in London before the invasion, the Panel finds that a deduction should be made for the expenses that would ordinarily have been incurred by KUNA in its operations in London. An adjustment should also be made for insufficient evidence.

389. The Panel accordingly recommends compensation in the amount of US$451,000 out of the US$1,734,342 claimed.

5. Other losses - US$518,952

(a) Pre-paid rent on headquarters and employee housing - US$495,457

390. KUNA seeks compensation for pre-paid rent on its headquarters and on housing for its employees. The pre-paid rent on the headquarters was paid for the year beginning 1 July 1990 and KUNA seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 30 June 1991. The pre-paid rent on the employee housing was paid for the period 1 July 1990 to 30 September 1990 and KUNA seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 30 September 1990.

391. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the periods that KUNA was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that for the headquarters the period is 2 August 1990 to 30 June 1991 and for the employee housing the period is 2 August 1990 to 30 September 1990.

392. In light of the above, the Panel recommends payment in full in the amount of US$495,457.

(b) Pre-paid life insurance and consulting fees - US$23,495

393. Before the invasion KUNA pre-paid life insurance as a benefit for some of its employees, covering the period from 28 April 1990 to 27 April 1991. It also pre-paid legal consulting fees for the period from 17 February 1990 to 16 August 1990. KUNA seeks compensation for the portion of these pre-paid amounts, which it asserts it could not obtain the benefit of because of Iraq's invasion and occupation of Kuwait.

394. The Panel finds that the principles as considered above at paragraph 391 apply equally to these pre-paid amounts. However, KUNA has not shown that, as a result of Iraq's invasion and occupation of Kuwait, it was unable to obtain the benefit of these pre-paid services.

395. In light of the above, the Panel does not recommend any compensation for these loss elements.

P. Ministry of Justice

Government Claim No. 48, UNCC Claim No. 5000177

Table 16. Summary Table for Ministry of Justice

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	1,586,033	925,000	396-399
Other tangible property	4,629,852	2,979,000	396-399
Loss of revenue	54,212,786	40,071,000	400-405
Stolen cash	88,900	61,000	406-407
Cost of investigations and administration and loss of transportation	1,648,215	769,000	408-411
Relief paid to employees	19,146,176	7,658,000	412-415
Total	81,311,962	52,463,000	
Interest	12,922,400		

1. Property losses

(a) Real property (office premises) - US$1,586,033

(b) Other tangible property - US$4,629,852

Furniture, fixtures, general equipment, stationery and miscellaneous items US$2,298,042
Computer and microfilm equipment US$2,016,226
Library books US$144,287
Vehicles US$171,297

396. The Ministry of Justice ("MOJ") is the governmental authority responsible for administering Kuwait's justice system, including court facilities, the office of public prosecution, and the offices engaged in the collection of certain fees, such as court filing fees and fines. MOJ's administrative office and facilities, including courthouses and an evidence storage facility, were looted, vandalized and damaged during Iraq's invasion and occupation of Kuwait. MOJ claims the cost of repairing the damage to its real property and the cost of replacing stolen or destroyed tangible property.

397. Some items of claim, such as library books and office supplies, fall below the level of materiality adopted by the Panel. The Panel has, therefore, neither requested nor reviewed any evidence other than that submitted by MOJ in respect of these items.

398. With respect to all the items, the Panel finds that adjustments should be made for an inadequate procurement process, inadequate accounting for depreciation, enhancement, saved expenses, and insufficient evidence.

399. In light of the above, the Panel recommends compensation in the amount of US$925,000 out of US$1,586,033 claimed for real property losses and US$2,979,000 out of US$4,629,852 claimed for other tangible property losses.

2. Business transaction or course of dealing - US$54,212,786

(a) Loss of revenue - US$54,212,786

400. Prior to the invasion, MOJ collected an annual revenue of approximately US$30,000,000 from payments of real estate registration fees, court filing fees, attorney certification fees and fines. MOJ claims for the loss of the revenue that, but for Iraq's invasion and occupation of Kuwait, it would have collected in the financial years 1991, 1992 and 1993. MOJ claims on the basis of projected revenues for those years, using a weighted average amount (that is, giving greater weight to more recent years) of the revenue earned for the five years prior to the invasion. Actual revenues obtained by MOJ for the 1991 to 1993 financial years are subtracted from the projected revenues for those years to arrive at the claim amount.

401. The Panel finds, applying the principles set out at paragraphs 51 to 58 above, that the loss of revenue (including revenue from fines) is compensable for the period described in paragraph 52 above, subject to deductions for exceptional post-liberation revenue, for revenue that would have been derived from other Government departments, and for saved expenses.

402. The Panel issued Procedural Orders in November and December 1998 seeking information about the revenue earned by MOJ in the fiscal years 1986-1995 and the method of raising and collecting certain fees and fines with a view to ascertaining whether there had been any extraordinary revenues and any savings in expenses which should be brought into account. MOJ's financial statements, monthly revenue information and responses to the requests in the Procedural Orders reveal that revenues increased significantly in the fiscal years 1994 and 1995. By analysing MOJ's revenue-earning patterns, the Panel finds that, if account is taken of MOJ's revenue for five years to 30 June 1995, MOJ suffered an overall shortfall of revenue in those financial years in the amount of US$42,180,000.

403. However, the Panel also finds, on the basis of the materials contained in the responses to the Procedural Orders, that reductions should be made to the amount of the shortfall in revenue by reason of saved expenses, including the salaries of persons involved in revenue collection and the cost of the means of transport and equipment used in relation to revenue collection.

404. No connection between the change in Kuwait's population composition and the loss of revenue was sufficiently clear for the Panel to act upon. The Panel has therefore not considered it appropriate to make any adjustment in this connection.

405. In light of the above, the Panel recommends compensation in the amount of US$40,071,000 out of the US$54,212,786 claimed.

3. Bank accounts and securities - US$88,900

(a) Stolen cash - US$88,900

406. MOJ claims compensation for cash and vouchers equivalent to cash stolen from its safes in the Justice Palace in Kuwait. The Panel finds that the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held there by MOJ.

407. MOJ withdrew by supplemental submission a portion of this item of claim in the amount of US$12,000 (relating to the vouchers). The Panel has therefore verified the claim for the remaining amount of US$76,900. As this item falls below the level of materiality adopted by the Panel, the Panel has neither requested nor reviewed any evidence other than that submitted by MOJ. The Panel finds that the claim is compensable but an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of US$61,000 out of the revised amount of US$76,900 claimed.

4. Public service expenditures - US$1,648,215

(a) Cost of investigations and administration and loss of transportation - US$1,648,215

408. MOJ administered a committee (the "MOJ Committee") during the occupation period to monitor the plight of those individuals missing as a result of Iraq's invasion and occupation of Kuwait and to work for their release. MOJ seeks the cost of operating the MOJ Committee during the occupation period and thereafter until May 1992, when responsibility for

the work of the MOJ Committee passed to the Council of Ministers, which has made a separate claim as set out above at paragraphs 342 to 343.

409. The Panel finds that the cost of establishing and operating the MOJ Committee are compensable as a direct loss flowing from Iraq's invasion and occupation of Kuwait. Two items, the cost of transporting released individuals to Kuwait by air and the cost of furniture and fixtures needed to set up the MOJ Committee at the outset, are both allowed in full. 59/ As to the other items, the Panel has allowed a reasonable amount in respect of administrative costs calculated on a basis consistent with the approach taken in respect of the claim for the costs of the COM Committee. 60/

410. The Panel is satisfied, having considered the period and nature of the claims for the expenses of the MOJ Committee and the COM Committee, that there is no duplication in the amounts claimed. The Panel also finds that an adjustment should be made for insufficient evidence.

411. In light of the above, the Panel recommends compensation in the amount of US$769,000 out of the US$1,648,215 claimed.

5. Payment or relief to others - US$19,146,176

(a) Relief paid to employees - US$19,146,176

412. MOJ seeks compensation in the amount of US$19,146,176 for relief paid to employees.

413. The response of the Government of Kuwait to the Panel's questions concerning the Social Security Fund states that the amount claimed is based upon the employees' salaries after the deduction of the social security contribution. The Panel accepts this statement.

414. As set out at paragraph 36 above, the Panel accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

415. In light of the above, the Panel recommends compensation in the amount of US$7,658,000 out of the US$19,146,176 claimed.

466. Some adjustment in the amounts claimed should be made for method of valuation, inadequate accounting for depreciation, saved expenses, and insufficient evidence.

467. In light of the above, the Panel recommends compensation in the amount of US$37,154,000 out of the US$72,947,330 claimed.

2. Public service expenditures - US$6,088,680

(a) Cash payments for repairs - US$6,088,680

468. MOE claims compensation for cash payments made to headmasters in the period March to August 1991 that were used for immediate cleaning and minor repair work to the schools. Most of the money is said to have been used to hire day labourers and to buy materials like tools, cleaning solvents, and window panes.

469. The Panel is satisfied that the cost of repairs claimed under this loss element does not duplicate the claim for real property losses set out at paragraphs 463 to 467 above. The Panel finds that this loss element is compensable on the same basis as other claims for the cost of repairs.

470. The Panel finds that adjustments should be made for insufficient evidence.

471. The Panel accordingly recommends compensation in the amount of US$5,328,000 out of the US$6,088,680 claimed.

3. Contract - US$412,781

(a) Contract interruption loss - US$412,781

472. Prior to Iraq's invasion and occupation of Kuwait, MOE entered into a contract for the construction of additional classrooms at a number of public schools. By the time of liberation it is claimed that 35 per cent of the work under the contract was completed. To complete the project, the contractor initially sought a 25 per cent price increase but after negotiation agreed to no more than a 10 per cent increase. MOE claims this amount as compensation.

473. The Panel finds that the price increase claimed is compensable in so far as it is attributable to the factors set out in paragraph 63 above, namely, site restoration costs, transportation costs and insurance costs. The Panel has calculated increases in relevant prices to arrive at an overall amount reflecting these factors. The Panel has examined only the

evidence submitted with the claim, given that the amount claimed falls below the level of materiality adopted by the Panel. The evidence shows that only part of the price increase was attributable to the relevant factors. Accordingly, the Panel recommends compensation in the amount of US$79,000 out of the US$412,781 claimed.

4. Other losses - US$14,359,998

(a) Loss of student files - US$14,359,998

474. Prior to Iraq's invasion and occupation of Kuwait, MOE maintained 375,000 student files containing personal and academic information, such as the student's birth certificate, grades received and medical history. MOE claims that approximately 60 per cent of the files, a total of 225,000, were damaged or destroyed during the occupation period. MOE claims for the cost of materials, labour and inconvenience (namely, the value of the lost information) resulting from the damage and destruction. MOE has noted in a supplemental submission that, as the files were a tangible form of data, the costs of recreating them could also be viewed as a tangible property loss (rather than an "other" loss).

475. The Panel issued Procedural Order 23 on 1 March 1999 to obtain information, among other things, as to the use to which the information in the files was put and as to whether all of the information in the files was available. The response noted that no separate records were kept of the cost of preparing new student file folders and that some information, usually held on file, is not now available. The response also recognised that there are two distinct aspects to the claim. First, there is the loss of materials such as paper and folders and, second, there is the loss of much of the information contained in the files. MOE's valuation method attributes a value to both aspects of the loss, although MOE acknowledges in its response that the information in the files was not used to generate income and, therefore, had no commercial value.

476. The Panel finds that the loss of the files is compensable. Compensation should therefore be awarded to represent the reasonable cost of the materials and labour which would be incurred in reassembling the files. Thus, the approach chosen by MOE to value this loss is not appropriate and, accordingly, the Panel proceeds to value it on the basis just mentioned. The Panel finds this cost to be US$2,023,000.

477. A further consequence of the valuation approach adopted by the Panel is that the exchange rate chosen by MOE (the average month-end rates for February 1993 to January 1994) is not appropriate. MOE used an exchange rate for a one year period as it considered the claim as one relating to estimated future payments. The Panel, in contrast, considers that a

Q. Ministry of Awqaf and Islamic Affairs

Government Claim No. 49, UNCC Claim No. 5000178

Table 17. Summary Table for Ministry of Awqaf and Islamic Affairs

Loss type/Loss element	Amount claimed US$	Amount Recommended US$	Paragraph references
Real property	28,140,680	19,815,000	416-424
Other tangible property	3,672,654	2,999,000	425-428
Relief paid to employees	8,655,689	3,289,000	429-432
Loss of revenue	26,784,067	15,938,000	433-435
Contract interruption loss	822,031	275,000	436-438
Total	68,075,121	42,316,000	
Interest	10,818,160		

1. Property losses

(a) Real property - US$28,140,680

416. The Ministry of Awqaf and Islamic Affairs (the "Ministry of Awqaf") is responsible for the construction and maintenance of mosques and the administration of all Islamic affairs. The General Secretariat of Endowments ("Endowments Secretariat"), an independent entity operating within the Ministry of Awqaf, is responsible for the investment of funds donated for the advancement of religious, cultural, social and civil purposes.

417. The real property losses of the Ministry of Awqaf include the cost of repairing or reconstructing some 800 damaged or destroyed mosques and other buildings, including the Al-Fahad shopping centre complex in Kuwait, and the cost of hiring additional personnel to supervise repair contracts.

418. Iraq submitted, in its response to Procedural Order 1, that there was only one mosque in an area in respect of which the Government of Kuwait asserts there were two mosques which had been destroyed. In the mission to Kuwait undertaken in June 1999, the site was examined by the expert consultants and Commissioner Jacovides. From the evidence at the site and the findings of the mission, the Panel is satisfied that there were, in fact, two mosques which were destroyed as a result of Iraq's invasion and occupation of Kuwait.

419. As regards all the mosques, some of the repair and reconstruction work was done urgently immediately after liberation and was followed by

additional repair work later. The Panel finds, as considered above at paragraph 73, that the cost of the temporary works was reasonably necessary in the circumstances and is therefore compensable.

420. The Panel has investigated the amount of damage done to each mosque for which claim is made, and has allowed reconstruction costs (which are considerably higher than repair costs) only where it is satisfied that the mosques were incapable of repair. Adjustments have been made so as to deduct the excess of reconstruction over repair costs in appropriate cases.

421. Some of the mosques which were damaged or totally destroyed are not being rebuilt. The Ministry of Awqaf states that some of the mosques are located near the border between Kuwait and Iraq or at Failaka Island and will not be rebuilt. Nevertheless, the Panel considers that the loss of these mosques is compensable and that compensation is to be measured by the cost of rebuilding or repair at a reasonable time, as set out at paragraph 66 above. The Ministry of Awqaf has estimated the total cost of rebuilding on the assumption of the total destruction of all the mosques in the area and on the basis of cost per square metre. The total cost was then reduced to reflect depreciation. So far as concerns mosques which the Panel is satisfied were incapable of repair, this method of calculation has been accepted and applied by the Panel. In other cases, the reasonable cost of repair only has been allowed. In both cases, the depreciation rates applied by the Ministry of Awqaf have been considered and adjusted where necessary.

422. As to the cost of hiring additional supervisors, the Panel finds that Kuwait was required to obtain the best price reasonably available in the circumstances for particular remedial works. The reasonable cost of hiring additional supervising engineers, to the extent that their duties related to remedial maintenance work, is compensable. As the engineers were hired to supervise five maintenance contracts for necessary remedial work, their cost is compensable. The Panel has found it necessary to make some adjustments to the claim for remedial works to exclude items not related to damage resulting from Iraq's invasion and occupation of Kuwait. It has therefore made an appropriate corresponding reduction to the claim for the cost of hiring the additional engineers.

423. The Panel finds that adjustments should also be made in relation to all real property losses for overstatement (including claims for damage not shown to have been a result of Iraq's invasion and occupation of Kuwait), inadequate accounting for depreciation, saved expenses, and insufficient evidence.

443. Some of the amounts claimed fall below the level of materiality adopted by the Panel. In relation to those amounts, the Panel has neither requested nor reviewed any evidence other than that submitted by PACI.

444. The Panel finds that the claim in respect of computers was understated by US$1,861,000 due to the use of a rate of depreciation that was too high in the context of the Panel's approach to valuation. Additional adjustments are required for overstatement (concerning valuation of replacement computer equipment) and saved expenses (in respect of vehicles).

445. Accordingly, the Panel recommends compensation in the amount of US$9,524,000 out of the US$13,391,524 claimed.

2. Public service expenditures - US$3,384,452

(a) Temporary Bahrain office - US$3,384,452

446. PACI asserts that it incurred a variety of expenses as it was compelled to establish and operate an office in Bahrain from November 1990 until June 1992. This was necessary because civil information databases and central records had to be kept secure and maintained during the period of Iraq's invasion and occupation of Kuwait. PACI's claimed expenses include six main categories of expenditures: civil ID expenses, civil ID design, personnel expenses, rent, maintenance expenses, and operating expenses.

447. The Panel accepts these assertions as to the initial need to operate the Bahrain office and, applying the principles set out above at paragraph 79, finds that PACI's decision to establish and operate that office was reasonable in the circumstances and that the costs of so doing are compensable, subject to deductions for expenses that would ordinarily have been incurred by PACI in its operations in Kuwait. However, the Panel finds that it was not reasonable for the Bahrain office to be maintained beyond autumn 1991 when PACI's offices in Kuwait were ready for use and hence compensation for the costs claimed is limited to the period from early November 1990 to the end of October 1991.

448. The Panel issued Procedural Orders in December 1998 and April 1999 seeking information about, among other things, assets purchased for use and expenses incurred in Bahrain. The responses by the Government of Kuwait and other evidence indicate that adjustments should be made for overstatement and saved expenses.

449. Accordingly, the Panel recommends compensation in the amount of US$2,294,000 out of the US$3,384,452 claimed.

3. Payment or relief to others - US$5,960,429

(a) Relief paid to employees - US$5,960,429

450. PACI seeks compensation in the amount of US$5,960,429 for relief paid to employees.

451. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

452. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

453. The Panel finds that an adjustment should also be made for overstatement.

454. In light of the above, the Panel recommends compensation in the amount of US$2,318,000 out of the US$5,960,429 claimed.

4. Business transaction or course of dealing - US$6,414,851

(a) Loss of revenue - US$6,414,851

455. Prior to the invasion, PACI earned revenue from the levying of fees for ID cards. PACI claims for the loss of revenue resulting from its inability to issue and renew ID cards in the period beginning 1990 through June 1992. PACI uses a weighted average amount (that is, giving greater weight to more recent years) for the four years prior to the invasion to determine projected revenues. Actual revenues obtained by PACI for the 1991 and 1992 fiscal years are subtracted from the projected revenues for those years to arrive at the claim amount.

456. The Panel finds, applying the principles set out at paragraphs 51 to 58 above, that the loss of revenue is compensable for the period described in paragraph 52 above, subject to deductions for exceptional post-liberation revenue, for revenue that would have been earned from other Government departments and for saved expenses.

457. The Panel issued procedural orders seeking information about the method and basis for collecting fees with a view to ascertaining whether there had been any extraordinary revenues and any savings in expenses which should be brought into account. Financial statements and the responses to the requests in the procedural orders reveal that revenues increased

significantly in the fiscal year 1993. By analysing PACI's revenue-earning patterns, the Panel finds that account should be taken of the income earned in the period up to 30 June 1993. Accordingly, PACI's loss of revenue resulting from Iraq's invasion and occupation of Kuwait is US$4,235,000 up to 30 June 1993.

458. The Panel also finds that PACI did not incur certain substantial expenses, such as salaries, that it ordinarily would have incurred to generate the revenue claimed and in this regard recommends a deduction so as to reduce the claim to nil.

459. In light of the above, the Panel does not recommend any compensation for the claim for loss of revenue.

5. Other losses - US$535,380

(a) Pre-paid rent on office and warehouses - US$535,380

460. PACI seeks compensation for pre-paid rent on leased offices and on warehouse space. The rent was paid prior to the invasion for the period 1 July 1990 to 31 December 1990 and PACI seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990.

461. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that PACI was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990.

462. In light of the above, the Panel recommends payment in full in the amount of US$535,380.

S. Ministry of Education

Government Claim No. 51, UNCC Claim No. 5000180

Table 19. Summary Table for Ministry of Education

Loss type/Loss element	Amount claimed US$	Amount Recommended US$	Paragraph references
Real property	72,947,330	37,154,000	463-467
Cash payments for repairs	6,088,680	5,328,000	468-471
Contract interruption loss	412,781	79,000	472-473
Loss of student files	14,359,998	1,047,000	474-479
Total	93,808,789	43,608,000	
Interest	14,908,320		

1. Real property - US$72,947,330

463. The Ministry of Education ("MOE") is the Government authority responsible for the administration of public education in Kuwait from kindergarten through to secondary school levels. Prior to Iraq's invasion and occupation of Kuwait, MOE administered a public education system with approximately 650 schools, 375,000 students, 26,000 teachers and 15,000 administrative staff. MOE asserts that during the occupation period many schools were damaged. It claims the cost of repairing them - a process which was carried out in two stages. In the first stage, immediately after liberation, school headmasters inspected damage and negotiated directly with contractors for initiation of urgent repair work. The second stage involved repair to the most heavily damaged schools and contracts were generally awarded after public tender procedures.

464. The Panel finds that the necessity for the rebuilding or repairing of the schools is a direct result of Iraq's invasion and occupation of Kuwait and is compensable. MOE states that 31 of the damaged or destroyed schools have not been repaired or replaced because they were located near the border between Kuwait and Iraq or on Failaka Island. The Panel, as set out above at paragraph 66, finds that the loss of or damage to such schools is nonetheless compensable.

465. The schools near the border between Iraq and Kuwait were all destroyed. In relation to five schools on Failaka Island, MOE claims the cost of reconstruction, rather than repair, although the schools are capable of repair. The Panel rejects this approach, considering that in this case only what would have been the reasonable cost of repair of the damaged schools is compensable.

424. In light of the above, the Panel recommends compensation in the amount of US$19,815,000 out of the US$28,140,680 claimed.

(b) Other tangible property - US$3,672,654

Vehicles US$162,299

Carpets and curtains from mosques US$243,777

Office furniture and equipment US$528,012

Loss of stock US$2,000,276

Printing press and workshop equipment US$738,290

425. The Ministry of Awqaf claims for the loss of, or damage to, tangible property including furniture, computers, office equipment and the contents of storage warehouses.

426. A few individual items of claim, such as the claim for vehicles, fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than submitted by the Ministry of Awqaf.

427. In respect of all items of claim, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, and insufficient evidence.

428. In light of the above, the Panel recommends compensation in the amount of US$2,999,000 out of the US$3,672,654 claimed.

2. Payment or relief to others - US$8,655,689

(a) Relief paid to employees - US$8,655,689

429. The Ministry of Awqaf seeks compensation in the amount of US$8,655,689 for relief paid to employees.

430. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

431. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution.

432. In light of the above, the Panel recommends compensation in the amount of US$3,289,000 out of the US$8,655,689 claimed.

3. Income producing property - US$26,784,067

(a) Loss of revenue - US$26,784,067

433. The Endowments Secretariat, which prior to the invasion invested in real estate, asserts that it suffered losses resulting from a reduction of rental income that it would have earned from residential and commercial buildings for the period from the time of the invasion until December 1992. The Panel sought information about the revenue earned by the Endowments Secretariat and about any laws that could have affected the rent received by it in the period from 1990 to 1992. Adopting the principles set out above at paragraphs 51 to 58, the Panel finds that the loss of rental revenue is compensable during the occupation and emergency periods and for a reasonable period thereafter, to be determined by reference to various factors such as the nature and extent of damage done to the relevant buildings. The Panel finds, having regard to all the circumstances, including the nature of the damage done to the buildings, the late connection of electricity in certain areas, and the absence of running water until the middle of 1991, the reasonable period is the occupation and emergency periods plus a further eight months. Thus, the compensable period is 18 months.

434. The Panel has considered whether there were any savings in costs which should have been deducted from the claim and has concluded that no adjustment is necessary.

435. In light of the above, the Panel recommends compensation in the amount of US$15,938,000 out of the US$26,784,067 claimed.

4. Contract - US$822,031

(a) Contract interruption loss - US$822,031

436. At the time of the invasion, the Endowments Secretariat was supervising nine construction projects for investment properties throughout Kuwait. After the invasion, each of the contractors stopped work on the projects. After liberation, to complete the contracts, the contractors demanded and obtained additional amounts over and above the pre-invasion contract amounts. The Ministry of Awqaf claims the incremental cost of completion which varies from 15 per cent to 20 per cent of the amount remaining on the original contract.

437. The Panel finds that the price increase claimed is compensable in so far as it is attributable to the factors set out in paragraph 63 above; namely, site restoration costs, transportation costs and insurance costs. The Panel has calculated increases in relevant prices to arrive at an overall amount reflecting these factors. The evidence shows that only part of the price increase was attributable to the relevant factors and no amount was claimed for site restoration.

438. In light of the above, the Panel recommends compensation in the amount of US$275,000 out of the US$822,031 claimed.

R. Public Authority for Civil Information

Government Claim No. 50, UNCC Claim No. 5000179

Table 18. Summary Table for Public Authority for Civil Information

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	2,750,594	2,008,000	439-441
Other tangible property	13,391,524	9,524,000	442-445
Temporary Bahrain office	3,384,452	2,294,000	446-449
Relief paid to employees	5,960,429	2,318,000	450-454
Loss of revenue	6,414,851	0	455-459
Pre-paid rent on office and warehouses	535,380	535,380	460-462
Total	32,437,230	16,679,380	
Interest	5,155,040		

1. Property losses

(a) Real property - US$2,750,594

439. The Public Authority for Civil Information ("PACI") maintains an information system about Kuwaiti and non-Kuwaiti citizens for the Government of Kuwait and, for that purpose, issues unified civil numbers and civil identification ("ID") cards to all residents of Kuwait. At the time of the invasion, PACI operated from two main offices. PACI claims the cost of repair to these two offices. Although PACI was the tenant in both offices, the Panel, following the approach set out above at paragraph 68, finds such costs to be compensable.

440. The Panel finds that adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

441. Accordingly, the Panel recommends compensation in the amount of US$2,008,000 out of the US$2,750,594 claimed.

(b) Other tangible property - US$13,391,524

Computers and other equipment US$13,013,283
Furniture US$286,744
Vehicles US$91,497

442. PACI seeks compensation for the above tangible property losses.

Notes

1/ A text of which is annexed to decision 10 (S/AC.26/1992/10).

2/ Plus the daily amounts referred to in Table 14.

3/ S/AC.26/1998/R.22.

4/ The U.S. Army Corps of Engineers held documents in Winchester in relation to the claim of the Ministry of Finance - Kuwait Emergency Reconstruction Office (see paragraph 134).

5/ S/AC.26/1991/7/Rev.1.

6/ S/AC.26/1992/15.

7/ Notably, "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)" (S/AC.26/1994/3), at part II, section D.

8/ Paragraph 9 of Governing Council decision 15 (S/AC.26/1992/15) states that: "The duty to mitigate applies to all claims".

9/ "Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535).

10/ At paragraphs 370 and following.

11/ Quoted in paragraph 21.

12/ Section II of Governing Council decision 9 (S/AC.26/1992/9) provides at paragraph 13 that "[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". The Panel finds this statement equally applicable to the Government of Kuwait's property left unguarded.

13/ See, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category "D" claims)" (S/AC.26/1998/1), at paragraphs 267-269.

14/ As a result of Iraq's response to Procedural Order 1 in relation to the claim of the Ministry of Interior (UNCC Claim No. 5000137), the Panel made enquiries in relation to the extent to which the employees had received payment of their salaries in advance prior to the invasion. The Panel also notes that a few employees who received relief payments retrospectively

also received payment for work done during the relevant period. The Panel has, in arriving at the percentage deduction to the claims for relief paid to employees set out in paragraph 48, taken into account the advance payments and the payments for work done.

15/ The Panel has considered the nature of economic activity in Kuwait and has concluded that this situation is explained by the fact that many Kuwaitis are owners or part-owners of businesses from which they derive income in addition to their salaried employment.

16/ The relief provided by the Government of Kuwait covered such items as living expenses while outside Kuwait, the provision of free utilities within Kuwait (by the forgiveness of payment therefor), the forgiveness of consumer debt, the forgiveness of certain rental payments, the distribution of free food, and the payment of a grant to each Kuwaiti individual who remained in Kuwait during the occupation period.

17/ The Panel notes that the response was compiled applying Government of Kuwaiti national accounts and statistics and on the basis of certain assumptions regarding income and expenditure patterns, and has made suitable allowance for the use of such techniques in quantifying its findings.

18/ Amounts provided for living expenses outside Kuwait during the period (under a programme set up by the Ministry of Finance and the subject of UNCC Claim No.5000112) were paid in respect of additional living expenses and do not comprise "compensation received elsewhere". Further, the Panel has not included in its consideration any relief provided for losses other than loss of income, such as relief in respect of loss of amenity, again to ensure that compensation is based upon the employees' true financial losses.

19/ See paragraph 42.

20/ A large percentage of the 60 per cent deduction arises in respect of "saved expenses".

21/ Governing Council decision 9 (S/AC.26/1992/9).

22/ See paragraph 87.

23/ Where the formation of a formal contract was not complete at the time of the invasion, the Panel finds that there ought to be compensation for contract interruption losses only when there is evidence of consensus at the time of the invasion as to the essential provisions of the contract (being the identification of the parties, the principal undertakings and the price to be paid).

24/ "Report and recommendations made by the Panel of Commissioners concerning part two of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1998/4), paragraphs 70-72.

25/ Increased transport costs arise because some of Kuwait's ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

26/ "Report and recommendations made by the Panel Of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6), at paragraph 106.

27/ The Panel views the decision of the "F1" panel in relation to pre-paid rent set out in, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6) at paragraph 74 as turning on the particular facts found by the "F1" panel.

28/ As stated at paragraph 36, the Panel finds that the relief paid to employees is compensable (on the basis of paragraph 36 of decision 7) as being payment or relief to others. This categorisation is based on a finding that the Government of Kuwait did not, in fact, pay the salaries of its Kuwaiti and GCC employees during the occupation and emergency periods. What it paid, in fact, was an amount of relief measured by reference to the salaries that those employees would otherwise have received. Those salaries therefore constitute a saved expense.

29/ Which, amongst other things, manages the Government's general reserve and future generations funds.

30/ The claim on behalf of the Public Authority for the Assessment of Compensation, UNCC Claim No. 5000193.

31/ (S/AC.26/Dec.18) (1994), at paragraph 1.

32/ (S/AC.26/1996/5/Annex.) ("WBC Report") at paragraphs 227-230.

33/ An exception to this is the claim of the National Committee for Missing and Prisoner of War's Affairs where the date of loss for calculation of interest is determined to be 31 October 1997 (see paragraph 344).

34/ The Panel has considered the three periods during which a document may have come into existence: prior to Iraq's invasion of Kuwait; during the

occupation and emergency periods; and thereafter. The Panel accepts that the number and quality of documents which may be expected to exist will vary according to each such period.

35/ Within the loss types (that is, those appearing on the Form F) the claimants have further subdivided the losses into categories which the Panel will refer as "loss elements". For example, "loss of revenue" is a loss element within the "business transaction or course of dealing" loss type. The Panel has approached its review of the claims and their supporting evidence by reference to loss elements as opposed to the more general loss types.

36/ See paragraph 115.

37/ For a description of the oil well fires see the WBC Report at paragraphs 36-37.

38/ Such as competition between the eight contractors mentioned in paragraph 134 or between a wider range of contractors.

39/ WBC Report at paragraphs 196-200 and "Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E1" claims" (S/AC.26/1999/10) at paragraphs 276-280. Further, the Panel has investigated the issue and is satisfied that there is no duplication between KERO's claim in relation to the airlift of fire-fighting equipment and the claims for freight costs that were considered in these two reports.

40/ The Government of Kuwait submits that in some instances the amount of allowance was not set by decree but by internal memorandum.

41/ "Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" claims" (S/AC.26/1998/7) at paragraphs 158-162.

42/ As set out in paragraph 192, the claimant revised the amount expended under this loss type from US$144,394,897 to US$57,700,000.

43/ At the time the original claim was submitted it was expected that the building would be completed in October 1994. The lease of the temporary premises required payment in advance for each half-year and so SAB claims rent until 31 December 1994. SAB later asserted that the actual relocation date was August 1996.

44/ For the first engineer, the period from 1 February 1992 to 24 July 1993 is 17.8 months - the same period of time he would have worked in the absence of the invasion. For the second engineer, the period between 16

May 1992 and 24 July 1993 is 14.3 months - less than the period of time he would have worked in the absence the invasion.

45/ WBC Report at paragraph 86.

46/ A comprehensive discussion of these costs is set out in paragraphs 341 to 343.

47/ This statement accords with the "Report of the Third Panel established pursuant to the note by the President of the Security Council of 30 January 1999, on Prisoners of War and Kuwaiti Property" (S/1999/100), which states at paragraph 22 that of an original list of 628 missing individuals submitted to the ICRC, twenty were "found to have dual names".

48/ The response to Procedural Order 30 states that the original list of 625 included 17 instances of "dual names". It also reveals that, between the two submissions, a further 13 names were removed from the list and 10 new names were added to it. These changes explain the net reduction of 20 names which took place between the dates of the two submissions. However, despite being requested by the Panel in Procedural Order 30 to explain the circumstances under which each of the twenty Individuals had been "accounted for", the Government of Kuwait has not provided evidence of the reasons for the removal of 12 of the further 13 names referred to above. For one of the 13 removed from the list, it is submitted by Iraq that his file was closed in 1996. The Panel therefore accepts the Government of Kuwait's submission that he was removed from the list in February 1996. The Panel also notes that the 10 "new" names have not been submitted as part of the COM Committee's claim and are, accordingly, not eligible for compensation. Thus, up to 1 February 1996, the number to be treated as missing is 596 comprising the 625 asserted cases less the 17 instances of "dual names", less the 12 cases for which sufficient information as to the reasons for removal from the list has not been provided. The number to be treated as missing from 1 February 1996 is 595.

49/ This provides that "payments are also available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

50/ "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)" (S/AC.26/1994/3) at paragraphs 125-126; "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages up to

US$100,000 (category "D" claims)", ("First D Report"), (S/AC.26/1998/1), at paragraphs 215-218.

51/ First D Report at paragraph 218.

52/ The COM Committee commenced making the support payments on 1 June 1991. The Panel chose 1 August 1999 as the date upon which the calculation of the present value of the future family support payments should be made.

53/ If, subsequent to the making of this recommendation, the Panel or the Commission learn that one or more of the Missing have been released or otherwise accounted for, then a corresponding correction will be made to this amount.

54/ Some of the employees who failed to return were of Jordanian or Palestinian origin. In its response to Procedural Order 1, Iraq asserted that there were various factors that led to the failure of these employees to return to Kuwait after liberation. Having investigated the issue, and considered all the evidence and information available, the Panel has concluded that there is insufficient evidence to demonstrate that the failure of Jordanian and Palestinian employees to return to Kuwait was a direct result of Iraq's invasion and occupation of Kuwait.

55/ The amount claimed was originally US$409,653 but, in its response to Procedural Order 16, the Government of Kuwait amended it to US$303,623 to reflect a change in the number of new employees for whom hiring costs were incurred.

56/ See endnote 55 for an explanation of the reason for the revision.

57/ KUNA submitted after it filed its original claim that the actual relocation date was December 1996.

58/ Including about 50 per cent of the articles on non-Gulf Arab countries but none of the articles on Kuwait and Kuwaiti personalities.

59/ These items are still being used by the COM Committee, the successor to the MOJ Committee.

60/ Although reference is made to the "MOJ Committee" and the "COM Committee" (defined in paragraph 326) there has only ever been one committee in relation to individuals missing as a result of Iraq's invasion and occupation of Kuwait. It operated first under the auspices of the Ministry of Justice and now operates under the auspices of the Council of Ministers.

61/ Plus the daily amounts referred to in Table 14

483. The Panel finds that the price increase claimed is compensable in so far as it is attributable to the factors set out in paragraph 63 above; namely, site restoration costs, transportation costs and insurance costs. The Panel has calculated increases in relevant prices to arrive at an overall amount reflecting these factors. The Panel has examined only the evidence submitted with the claim, given that the amount claimed falls below the level of materiality adopted by the Panel. The evidence shows that only part of the price increase was attributable to the relevant factors.

484. Accordingly, the Panel recommends compensation in the amount of US$230,000 out of the US$372,181 claimed.

2. Other tangible property - US$3,136,583

Motor vehicles US$671,211
Furniture, office equipment and supplies US$1,218,655
Residential facilities equipment US$1,246,717

485. MSAL claims for the loss of 96 motor vehicles (automobiles, trucks and buses), damage to and loss of furniture, office equipment and supplies (both from its numerous facilities and from storage areas) and the loss of specialized equipment such as medical and therapeutic equipment from its social care, handicap, retirement, and children's facilities.

486. A number of individual claim items, such as the claim for the automobiles and the claim for the trucks, fell below the level of materiality adopted by the Panel. The Panel has therefore neither requested nor reviewed any evidence other than that submitted by MSAL in relation to these items.

487. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, method of valuation, and insufficient evidence.

488. In light of the above, the Panel recommends compensation in the amount of US$1,229,000 out of the US$3,136,583 claimed.

3. Bank accounts and securities - US$2,186,254

(a) Cash - US$2,186,254

489. MSAL seeks compensation for the loss of cash held in safes in its various offices and facilities. MSAL asserts that this cash was kept on hand to cover daily operational expenses and for distribution to the poor and that it was taken during the occupation period.

490. The Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by MSAL. An adjustment should be made for insufficient evidence.

491. Accordingly, the Panel recommends compensation in the amount of US$1,530,000 out of the US$2,186,254 claimed.

4. Payment or relief to others - US$53,177,826

(a) Relief paid to employees - US$53,177,826

492. MSAL seeks compensation in the amount of US$53,177,826 for relief paid to employees.

493. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

494. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution.

495. The evidence has revealed an understatement in MSAL's claim and the Panel has therefore made a notional increase to the claimed amount to take this into account. However, the Panel finds that an adjustment should also be made for insufficient evidence.

496. In light of the above, the Panel recommends compensation in the amount of US$18,881,000 out of the US$53,177,826 claimed.

U. Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression

Government Claim No. 61, UNCC Claim No. 5000193

Table 21. Summary Table for Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Claim preparation costs	217,107,139	0	497-500
Total	217,107,139	0	
Interest	84,443,216		

1. Claim preparation costs - US$217,107,139

(a) Claim preparation costs - US$217,107,139

497. The Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"), which was established in May 1991 and began operations in August 1991, is the sole Government of Kuwait authority for matters concerning the preparation and processing of claims before the Commission. The Government states that PAAC's work includes:

(a) assisting the citizens of Kuwait, citizens of some countries which are members of the GCC, the businesses of Kuwait and the Government in the preparation of their claims filed with the Commission;

(b) providing a central depository and archive system for all claims filed by Kuwaiti citizens, some GCC citizens, Kuwaiti businesses and the Government; and

(c) providing a mechanism for the disbursement of funds awarded.

498. PAAC's claim is for the costs incurred in preparing and processing the claims including salaries and benefits paid to PAAC employees, expenditure on goods and services, primarily consisting of the cost incurred to hire independent consultants, on fixed assets and equipment, costs associated with the renovation and maintenance of facilities and other expenses incurred by PAAC employees such as travel and training seminars.

499. The original claim, submitted in 1994 and seeking US$118,667,819, included actual expenditures for the fiscal years ended 30 June 1992 and 1993 and budgeted expenditures for 1994 and 1995. The supplemental claim

filed by PAAC in May 1998 includes actual expenditures for 1992 to 1997, budgeted expenditures for 1998 and 1999 and estimated expenditures for 2000 to 2003.

500. In light of the consideration of this matter in paragraphs 92 to 94 above, the Panel does not make any recommendation with respect to this claim.

VII. SUMMARY OF RECOMMENDATIONS

501. The following is a summary showing, for each first instalment claim, the principal claim amount and the Panel's recommended award.

Table 22. Summary of the principal claim amount and the Panel's recommendation for each first instalment claim

Claimant	Principal claim amount (US$)	Recommendation (US$)
Public Authority for Youth and Sports	8,073,928	3,770,000
Ministry of Finance - Kuwait Emergency Reconstruction Office	389,188,073	300,863,000
Amiri Diwan	7,391,290	4,722,000
Ministry of Finance	936,570,995	726,000,000
Ministry of Interior	292,631,800	103,123,000
Kuwait Fund for Arab Economic Development	9,263,851	3,450,926
State Audit Bureau	4,529,148	2,054,857
Council of Ministers	26,690,866	12,782,000
Department of Legal Advice and Legislation	2,413,083	1,153,117
Civil Service Commission	4,284,506	1,764,270
Ministry of Higher Education	2,515,858	1,476,518
Ministry of Commerce and Industry	20,937,074	10,087,000
National Committee for Missing and Prisoners of War's Affairs 61/	111,483,429	177,109,000
Kuwait News Agency	24,541,693	6,915,457
Ministry of Justice	81,311,962	52,463,000
Ministry of Awqaf and Islamic Affairs	68,075,121	42,316,000
Public Authority for Civil Information	32,437,230	16,679,380
Ministry of Education	93,808,789	43,608,000
Ministry of Social Affairs and Labour	58,872,844	21,870,000
Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression	217,107,139	0
Total	2,392,128,679	1,532,207,525

Geneva, 13 September 1999

(Signed) Sir Elihu Lauterpacht
Chairman

(Signed) Andrew Jacovides
Commissioner

(Signed) Reiner Soll
Commissioner

reasonable time for commencing the work and paying for it would have been during the last quarter of 1991 and uses the exchange rate of KD 1 = US$3.497 then generally prevailing. This exchange rate was higher than the exchange rate used by MOE. This results in a notional addition to the claim in the amount of US$70,000.

478. The Panel also finds that a reduction should be made for insufficient evidence.

479. The Panel therefore recommends compensation in the amount of US$1,047,000 out of the US$14,359,998 claimed.

T. Ministry of Social Affairs and Labour

Government Claim No. 56, UNCC Claim No. 5000188

Table 20. Summary Table for Ministry of Social Affairs and Labour

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Contract interruption loss	372,181	230,000	480-484
Other tangible property	3,136,583	1,229,000	485-488
Cash	2,186,254	1,530,000	489-491
Relief paid to employees	53,177,826	18,881,000	492-496
Total	58,872,844	21,870,000	
Interest	9,356,560		

1. Contract - US$372,181

(a) Contract interruption loss - US$372,181

480. The Ministry of Social Affairs and Labour ("MSAL") is responsible for granting work permits to non-Kuwaitis. It also operates Kuwait's retirement homes, social care centres, and handicap centres.

481. MSAL asserts that at the time of the invasion it was supervising three projects, all of which were interrupted by the invasion. The contract for the first project, the replacement of a fresh water pipe network at its social care complex in Sulaibikhat, had not been formally concluded at the time of the invasion. In fact, even the bidding and contractor selection procedures had not been completed. In respect of this project, MSAL claims the difference between its estimate of what the contract price would have been if the contract had been finalised before the invasion and the price actually paid for the work after liberation. The Panel finds, applying the principles contained in paragraph 59 above, that there is insufficient evidence of consensus as to the essential provisions of the pre-invasion contract and so does not recommend any compensation for the "interruption" of this first project.

482. For the other two projects, contracts were in existence at the time of the invasion. The first project was for the supply and installation of air handling units at MSAL's social care complex in Sulaibikhat. The second was for the installation, operation and maintenance of air conditioners in other MSAL facilities in Kuwait. After liberation, the contracts were renegotiated with a 20 per cent price increase. In addition, an amount was paid by MSAL for the cost of site restoration in relation to the contract for air conditioners.